

# **The Islamic Law and Constitution**

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*In the name of Allāh, the Beneficent, the Merciful*

## AUTHOR'S PREFACE

**T**HE first edition of this book was compiled while I was in prison. As such, neither could I add anything to the book nor could my suggestions be sought in its compilation. Now the second edition has been prepared in full consultation with me and contains almost all of my speeches and articles relating to the subjects of Islamic Law and Constitution. Mr. Khurshid Ahmad deserves my heart-felt thanks for the skill and ability with which he has translated and edited the book.

A book like the present one, which has not been written in the common textbook style, may not cater to *all* the academic needs of a student of Islamic Law and Constitution, who wants to study the subject in all its multifarious details, but, I do hope, it will prove of immense help to all those persons who want to study the nature of the Islamic State, its theory, form and underlying principles, and who wish to understand how the Islamic Law can be implemented in a modern state. Today there are many countries whose Muslim population is, after attaining independence, naturally eager to base its polity on those principles and traditions of Islam which are a demand of its faith and conscience. The people want that the Islamic Law should be introduced in their respective countries so that they may follow a law to which they owe their honest and sincere allegiance. But, unfortunately, in almost all such countries the reins of power have been in the hands of those persons who not only did not

have even an elementary understanding of Islamic Law and Constitution, but had all their education and training for the running of Godless secular states. Therefore everywhere they are in a bad predicament because they are incapable of thinking except in terms of the nature and pattern of a state of the Western secular type. They are not in a position to wriggle themselves out of the Western modes of thinking and practice. The position of the Muslim masses is not very dissimilar in certain respects. No doubt they are extremely eager to re-establish the Islamic way of life and this urge of theirs is very real and sincere. But they too are not clear about the nature and form of the state whose establishment they so sincerely urge. They also do not know as to what should they do to establish the state of their dreams. Furthermore, Western thinkers and policy-makers whose opinions have begun to command immense importance in our times, who are influencing most the destinies of the Muslim countries, and to whose opinions we too give due weight, harbour many a prejudice and suspicion about the nature and prospects of the Islamic State. I think that most of their suspicions and apprehensions are due to a lack of information and understanding and not because of any malice, and as such they are removable. In the articles presented in this book I have made an humble attempt to serve all these sections. I wish that whatever opinion is formed about the Islamic State, should be formed after one has properly and thoroughly acquainted himself with its nature and content, and not otherwise. The present book will, I hope, help a great deal in understanding the various aspects of an Islamic State.

I am thankful to all those persons who offered their comments on the first edition of the book in Pakistani and foreign newspapers and journals. I have tried to benefit from their comments as much as possible. I do not propose to give, in this preface, any rejoinder to the objections particularly raised by the Western reviewers and critics. But I would submit that

there should be a limit to one's desire to see everything in accord with one's own wishes. There can be a people who may have very basic differences with the West in respect of human values, ideals, culture and civilization and they have as much a right to fashion their collective life in accordance with their own values and ideals as the West has to do according to its own. For a happy co-existence, the thrusting of one's beliefs and doctrines on the other is as detrimental and injurious as is an honest endeavour to understand one another's ideology in its true lights necessary and helpful.

ABUL A'LA MAUDUDI  
*Lahore : 15th October, 1960.*

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# I

## INTRODUCTION

**I**SLAM today is passing through one of its most crucial periods. In the first half of the twentieth century, a widespread revival of Islam has occurred. The chains of political servitude have been broken at many a place and nearly eighteen Muslim countries have attained independence during the last two decades. Intellectual and cultural movements aiming at Islamic renaissance have emerged throughout the length and breadth of the Muslim world and are gradually gaining strength. Although there have been ups and downs because of political exigencies, the overall movement for Islamic revival has been slowly moving in the upward crescendo. The entire world of Islam is humming with a new ambition to rehabilitate Islam and revive its pristine glory. Everywhere Muslims are on the march. Muslims are on the march everywhere

But the new challenge to Islam also emerges from this very onward march of the Muslims. The course of events has put them on trial. It is to be seen how they acquit themselves of it.

The basic problem before the world of Islam is how to re-establish the Islamic ideology in the world of the mid-twentieth century. This problem poses a great challenge, because Islam is not a mere collection of dogmas and rituals. It is a complete way of life. It is the embodiment of Divine Guidance for all fields of human life, may they be private or public, political or economic, social or cultural, moral or legal and judicial. Islam is an all-embracing ideology and the problem that besets the Muslim world, which has only recently emerged from political slavery, is of translating this ideology into practice and of reconstructing its socio-political life in accordance with it.

The movement for the introduction of the Islamic law and the establishment of the Islamic State is a part and parcel of this overall movement for the revival and the rehabilitation of

Islam. The movement is not afoot in more or less every Muslim country, particularly in those countries which have recently attained independence. Everywhere people are pressing for the framing of an Islamic Constitution and for the introduction of the Islamic law. Sudan, Indonesia, Pakistan, Malaya, Somalia, etc. all are witnessing the same movement. The question arises why has one and the same trend appeared in so many and so far off places? And why is the problem of Islamic State becoming important with the spread of political freedom?

Western observers and those totally educated in the Western tradition often fail to understand the phenomenon. It seems, therefore, advisable to cast a cursory glance over the case of Muslims for the establishment of Islamic State.

## II

### WHY MUSLIMS WANT AN ISLAMIC STATE?

The question why Muslims want an Islamic State is a strange question. For Muslims should not and, as a matter of fact, could not as Muslims but want an Islamic State. This is the only natural course for them. If they wanted anything else, then an explanation would perhaps be called for; and not in the case when they want it. But because of a host of reasons an explanation to this effect has become necessary.

Firstly, the intellectual and religious background of the world of Islam is very different from that of the West and as such it becomes difficult for the Western and the West-oriented observers to grasp and appreciate the situation. It is, therefore, necessary that the Islamic concept of religion and the Muslim outlook on politics should be clearly understood at the very outset. Then alone can a better understanding of the contemporary Muslim political thought be developed.

Secondly, the educated younger generations of the Muslim world too have been estranged from their own cultural and intellectual tradition. Under the influence of Western education they have imbibed the Western political concepts and are think-



ing of introducing them in the Muslim world without any regard for the Muslim tradition as such. And as, through a cruel conspiracy of circumstances, the reins of power in many a country has passed from the hands of the erstwhile Imperialist powers to this very class of West-oriented Muslims the need for a precise presentation of the Islamic case has increased manifold.

Islam holds that Allah has created the Universe and controls and governs it. He created man and provided him with all that he needs for the progress and growth of life. To fulfil his material needs He has endowed the world with all kinds of materials and substances which man can harness to his use. To cater to his spiritual, cultural and social requirements, he needs His revealed Guidance through His Prophets. It is the Guidance which constitutes the religion of Islam.

Life is a unity. It cannot be divided into water-tight compartments. The function of religion is to direct the affairs of life. Therefore its domain is life in its entirety, and not any specific aspect of it. That is why it not only gives an outlook on life and reality but also lays down the basic principles on which man's relationships to his own self, to other men and society, and Allah the Creator are to be reared. It looks upon life in its totality and provides guidance for every field of activity. The mission of a prophet, according to Islam, is not merely to cater to spiritual elevation. His mission is to purify the beliefs and ideas of man about Reality, to purge his soul of all impurities, to awaken his moral consciousness and to use this moral force for the reconstruction of the society and the remoulding of the flux of history.

This has been the mission of all the prophets of God and Prophet Muhammad (peace be upon him) was the last of the prophets to whom God's Guidance was revealed in its completeness and who established an ideal social order—a complete civilization—in accordance with this Guidance. It is this Guidance which is enshrined in the Qur'an and *sunnah*, the word of God and the example of the Holy Prophet, and constitutes the religion of Islam.

The Qur'an explicitly asks man to submit to God with a complete submission and to accept His Guidance in every field of activity. The call of the Qur'an is :

"O ye who believe ! enter into Islam wholly and follow not the footsteps of the Satan, verily he is unto you an enemy manifest". (2 : 208)

The mission of the prophets, according to the Qur'an is the establishment of virtue and justice in accordance with the revealed guidance.

"We verily sent Our messengers with clear proofs, and revealed with them the Scripture and the Balance, (i.e., the authority to establish Justice), that mankind may observe the right measure ; and He revealed iron (i.e., coercive power) wherein is mighty power and (many) uses for mankind and that Allah may know who helpeth Him and His messengers, though unseen". (57 : 25)

"He it is Who hath sent His messenger with the Guidance and religion of Truth, that He may make it supreme over all other ways, however much idolaters may be averse". (61 : 9)

Thus Islam wants to fashion one's entire life according to the principles of individual and social behaviour revealed by God and does not confine itself to the precincts of the private life of the individual alone. Politics, on the other hand, studies the relationship of man with the state and of man with man. In Islam this too is the domain of religion, which comprehends all aspects of life. Islam does not admit of any separation between religion and politics; it wants to conduct politics also in accordance with the guidance provided by religion and to use the state as the servant of the Lord. The Qur'an lays down that Allah is the Sovereign and the Law-giver and His revealed law must be adopted as the law of the land. According to the Qur'an :

"The command is for none but God : He hath commanded that ye obey none but Him: that is the right path". (12 : 40)

"Verily, His is the Creation and His is the Law".

(7 : 54)

"If any do fail to establish and decide by what God hath revealed, they are the unbelievers.....the unjust.....the evil-doers". (5 : 44, 45, 47)

Islam uses political power for the reform of the society and does not leave it to degenerate into 'the last resort of a scoundrel'. It rather makes the Prophet pray that the rulers be converted to the creed and become its support.

"Say : O my Lord ! Let my entry be by the Gate of Truth and Honour and likewise my exit by the Gate of Truth and Honour : And grant me from Thy presence a ruling authority to aid me". (17 : 80)

Maulana Maududi, in his *Tafsir*, explains the above verse as follows :

"That is either grant me power on earth or make any ruling authority, any state, my supporter, so that I may, with the force of the coercive powers of the state, establish virtue, eradicate evil, put an end to the surging tide of corruption, vulgarity and sin, set at right the disruption which has engulfed life and administer justice according to Your revealed law".

This is the real meaning of the verse and this is the interpretation given by *Hasan Basri*, *Qatada*, *Ibn Jarir* and *Ibn Kathir*. This view is further supported by the *hadith* :

"Allah through state power puts an end to that what He does not eradicate through the Qur'an".

This shows that reforms which Islam wants to bring about cannot be carried out by sermons alone. Political power is also essential to achieve them.<sup>1</sup>

This is the approach of Islam. And the logical consequence of this approach is that the state must be moulded on Islamic patterns. This is a dictate of the Islamic faith and cannot be disregarded. The Western concept of the separation of religion

<sup>1</sup> Abul A'la Maududi, *Tafhimul Qur'an*, Vol. II, Lahore 1954, p. 618

from politics of secularism—is foreign to Islam and the adoption of it would be the very negation of the Islamic concept of polity.

This problem has become very serious with the spread of political freedom. In the past, Muslims were not free to fashion their political life according to their own likes and dislikes. They were under the yoke of Western imperialism and had no freedom to order their affairs according to the Islamic principles. But after the attainment of independence, they are free to adopt whatever way of life they like. If, even after the attainment of this freedom, they do not adopt the Islamic way and instead of enforcing Islamic law, choose to run their state on some other lines, this avoidance of Islam on their part would amount to no less than a form of national apostasy—something of which Muslims cannot conceive.

This concept of Islam, further supported by the practice of the Holy Prophet (peace be upon him), of the *Khilafat-i-Rashida* and of the multitude of Muslim reformers, impels Muslims to strive for the establishment of Islamic State.<sup>1</sup> This is why this move is spreading throughout the world of Islam and has become one of the most important topics of our age.

A perusal of Islamic history reveals that throughout the long range of thirteen centuries, no ideal other than Islam has ever spurred Muslims to any great action. Islam is the very breath of their life; it alone has moved them to accomplish great feats of glory. Any contrary ideal has never caught their imagination, has never moved them to sacrifice their entire existence, has never won any popular support amongst them. Professor Wilfred Smith, while surveying the problems of nationalism in the Muslim world, admits this unique phenomenon of Islamic history. He observes:

1. Here a clarification is perhaps called for. There is a basic difference between a 'Muslim State' and an 'Islamic State'. A Muslim State is any state which is ruled by Muslims. Islamic State, on the other hand, is one which opts to conduct its affairs in accordance with the revealed guidance of Islam and accepts the sovereignty of Allah and the supremacy of His Law, and which devotes its resources to achieve this end.

"No Muslim people has evolved a national feeling that has meant a loyalty to or even concern for a community transcending the bounds of Islam".<sup>1</sup>

Also that :

"In the past, only Islam has provided for these people this type of discipline, inspiration and energy".<sup>2</sup>

This is a unique feature of Islamic history and the move of the Muslim people towards the Islamic State is the natural function of their history. Any other move simply cannot succeed.

Moreover, the experiment of the Western countries with secularism are in no way encouraging. Separation of politics from morality and religion has created more problems than it has solved. The result is that there is 'scepticism in thought, confusion in values, expediency in standards, vulgarity in behaviour and opportunism in diplomacy. Politics has become out-and-out machiavellian and this state of affairs has greatly impaired the poise and tranquillity of life. That is why, in the words of a philosopher, although the modern man has "learned to fly in the skies like the birds and to swim in the oceans like the fishes, but has failed to learn to live on earth like human beings". That is why the renowned historian, Arnold Toynbee is even doubting the value of secularism as an ideal. He says:

"Perhaps it is impossible to attain secular happiness for the individual by pursuing this secular happiness as an ultimate end in itself ; but it is conceivable that secular happiness for the individual may be produced as an incidental by-product if the individual is aiming at something else that is spiritually above it and beyond it. Secular happiness may be a by-product of trying to carry out the spiritual aims that are common to all the higher religions : the effort to take sides with what is good against what is evil, and the effort to attain harmony with Absolute Reality or

1 Walfred C. Smith, *Islam in Modern History*, Princeton, 1957. p. 77.

2. *Ibid.*

God"<sup>1</sup>.

Iqbal has also very forcefully pointed out the real malaise of the Western culture. He says :

"Both nationalism and atheistic socialism, at least in the present state of human adjustments, must draw upon the psychological forces of hate, suspicion and resentment which tend to impoverish the soul of man and close up his hidden sources of spiritual energy. Neither the technique of medieval mysticism nor nationalism nor atheistic socialism can cure the ills of a despairing humanity. Surely the present moment is one of great crisis in the history of modern culture. The modern world stands in need of biological renewal. And religions, which in their higher manifestations are neither dogma nor ritual, can alone ethically prepare the modern man for the burden of the great responsibility which the advancement of modern science necessarily involves, and restore to him that attitude of faith which makes him capable of winning a personality here and retaining it hereafter. It is only by rising to a fresh vision of his origin and future, his whence and whither, that man will eventually triumph over a society motivated by an inhuman competition, and a civilization which has lost its spiritual unity because of its inner conflict of religious and political values"<sup>2</sup>.

In this context Iqbal's call was as under :

"Humanity needs three things today——a spiritual in-

1. Arnold Toynbee, *Christianity among the Religions of the World*, Oxford University Press, London, 1958, p. 562 (*Emphasis ours*) Speaking at the Jamshed Memorial Hall, Karachi, Prof. Toynbee said : "Religion was indispensable for human beings, and without it, the existence of man was not possible. Religion was essential for solving the most complicated problems of the individual and the society. In modern scientific advancement, religion has still to play a better and important role for the preservation of the personality of man." Quoted in *The Islamic Review*, London, January 1960, p. 30.
2. Muhammad Iqbal, *Reconstruction of Religious Thought in Islam*, Lahore, 1954, pp. 183-189 (*Emphasis ours*).

interpretation of the Universe, spiritual emancipation of the individual, and basic principles of a universal import directing the evolution of human society on a spiritual basis... Believe me, Europe today is the greatest hindrance in the way of man's ethical advancement. The Muslim, on the other hand, is in possession of these ultimate ideas on the basis of a revelation... Let the Muslim of today appreciate his position, reconstruct his social life in the light of ultimate principles, and evolve that spiritual democracy which is the ultimate aim of Islam"<sup>1</sup>.

With this belief and this realisation, Muslims are trying to carve out their own path and to set, by establishing a political order on the moral principles of Islam, an example before a world torn by Secularism, Nationalism and Communism.

Lastly, they are faced with the problem of Communism. Communism has shaken the Western world and the spectre is now haunting the Muslim East. Communism is a social philosophy, but in the last analysis, it is an ideology which is a product of secularism and atheism and which emerged to fill the vacuum created by the disintegration of religion in the West. Poverty and social disorder there always have been. Communism appeared on the scene only when religion, the hope of the people, was destroyed. It is a product not mainly of poverty but essentially of materialism, and religion alone can meet its challenge. R. N. Crew-Hunt rightly says that :

"It is, in the last analysis, a body of ideas which has filled the vacuum created by the breakdown of organised religion as a result of the increasing secularisation of thought during the last three centuries, and it can be combated only by opposing to it a conception of life based upon wholly different principles".<sup>2</sup>

1. Muhammad Iqbal, *Reconstruction of Religious Thought in Islam*, Lahore, 1954, pp. 153-159 (*Emphasis ours*)
2. R. N. Crew-Hunt, *The Theory and Practice of Communism*, London, 1951, p. 8.

Douglas Hyde, a former editor of the *Daily Worker*, London, endorses the same analysis. He writes :

"Communism is not, first and foremost, a social or political problem. It is a spiritual problem and only if we understand this, shall we see why it has spread in this particular age and no other. Its rapid growth would not have been possible in the age with a faith. Only in a pagan, faithless age was it possible for such a philosophy and way of life to spread to millions of men..."<sup>1</sup>

"Communism uses the very poor in times of crisis or when a revolutionary situation develops. . This is its main interest in them. Social justice is the thing upon which it feeds. It is not the originator of Communism"<sup>2</sup> "The spread of Communism and Communist influences has been made possible by the spread of wrong ideas, wrong values, wrong standards. Still more, it has been made possible by the existence of large numbers of people with no standards, no values, often all—but no ideas at all."<sup>3</sup>

"Communism is the expression of a deep *Spiritual* ill. The spread of Communist influence can, in the long run, only be countered by the spread of the Faith."<sup>4</sup>

Muslims believe that the greatest bulwark against Communism is Islam. Islam is the faith and religion of over five hundred million human beings.<sup>5</sup> It is the force which has moved them in the past and which is the sheet-anchor of their present existence. It is an ideal which inspires them and can move them to action, effort and sacrifice. It is a social philosophy which stands for justice and well-being and has a just end moral, political and economic ideology of its own.<sup>6</sup> Islam not

1. Douglas Hyde, *The Answer to Communism*, London, 1951, p. 46.

2. *Ibid.*, p. 47. (*Emphasis ours*).

3. *Ibid.*, p. 49 (*Emphasis ours*).

4. *Ibid.*, p. 50 (*Emphasis ours*).

5. See Abdullāh Al-Masūdī, *Muzaḥib-e-Ālam*, Karaohi, 1938, p. 130

6. Prof. Wilfrid O. Smith, himself a former Socialist, admits in his recent book, *Islam in Modern History* :

"Surely Islamic enterprise has been the most serious and sustained endeavour ever put forward to implement justice among men and until the rise of Marxism was also the largest and most ambitious."  
*Islam in Modern History*, op. cit., p. 24.



only gives them an ideal to live and die for, it also establishes a social order in which equity, justice and fair play reign. Such an ideology alone can check the onward march of Communism. The negative ideology of secularism cannot cross the way of the positive movement of Communism. Muslims see in the Islamic State the surest answer to Communism. The establishment of the Islamic State would not only check the onward march of Communism but would be a positive challenge to it. And that is how Communism can be met on its own grounds.

This is, in brief, the Muslims' case for an Islamic State and herein lies its importance for the Muslims in particular and for the world at large in general.

### III

## HISTORICAL BACKGROUND OF PAKISTAN

The Pakistan movement was an expression of Muslim India's firm desire to establish an Islamic State. The movement was inspired by the ideology of Islam and the country was carved into existence solely to demonstrate the efficacy of the Islamic way of life.

Islam came to India through Muslim traders, travellers and *sufis*. With the spread of Islam, the desire to establish an Islamic polity in the sub-continent gained strength. Muslim rulers, in response to the aspirations of the Muslim masses, introduced Islamic Law and established the *Shari'at-e-Islam* (Islamic Institutions). Although there was monarchy and despotism, institutions alien to the letter and spirit of Islam, but the *Shari'ah* did constitute the law of the land and there was no mass-deviation from Islam. This was not a very welcome situation, for Islam was not being enforced in its entirety. But there was also no movement against Islam and it was expected that through sustained effort, things would be corrected in the course of events. It was during the reign of Akbar that a calculated endeavour was made to purge Islam from the socio-political life and to evolve a new religion—a hotch-potch of

Hinduism, Buddhism, Paganism and Islam—under the patronage of the State. This produced a strong reaction among the people who revolted against this idea and the movement for the establishment of the *Shari'ah* emerged in full force. It was pioneered by *Shaikh Ahmad of Sarhind*, popularly known as *Mujaddid Alf-i-Thani* who propagated the teachings of Islam in a systematic way, proclaimed the truth undeterred by threats, created public opinion for social and political reforms, fought for Islam undaunted by the tempests of adversity and even suffered imprisonment in the historic Gwalior Fort. It was as a result of this movement that the anti-Islam policy of *Akbar* fizzled out almost immediately after his death and gradually even the Mughal emperors became Islam-oriented, so much so that history witness *Aurangzeb* who was an ardent soldier of Islam and in whose reign codification and introduction of Islamic law was accomplished.

The torch which *Mujaddid Alf-i-Thani* lit was kept burning by the later generations and the movement progressed under the guidance of different leaders of thought and action. *Shah Waliullah* of Delhi reconstructed the Islamic thought and laid the foundations of Islamic renaissance in the country. All the reformers of the nineteenth and twentieth centuries drew their inspiration from this beacon of learning.

*Shah Ismail Shahid* and *Sayyid Ahmad Shahid* waged a movement for the establishment of the Islamic State. They fought the Sikhs and the British imperialists and their ultimate objective was to establish *Khilafat ala minhaj-e-Khilafat-e-Rashidah* (Islamic State on the pattern of the State established by the Rightly-Guided Caliphs). In the words of *Sayyid Ahmad Shahid* :

"The only desire that spurs me is that the law revealed by the Almighty, which we call the *Shari'ah* may be enforced in all the lands and on all the peoples and there should remain no conflict or tangle in this respect. My objective is to accomplish this task—this may be achieved through my hands or through anybody else's. What I want is that

this must be done. And I resort to all those means and devices which seems to help in the achievement of this end.<sup>1</sup>

Although *Sayyid Ahmad* and his armies could not succeed, they ignited a fire in the hearts and souls of the people and the Movement continued even after their martyrdom. This movement left such indelible impressions upon the minds of the Indian Muslims that no amount of British repression could efface them. The blood-stains at Balakote continued to inspire the people and indeed the movement has survived in all its pristine force up to the present day.

*Sir Sayyid Ahmad Khan* tried to strike a compromise with Western thought but despite his sincerity, modernism could not gain ground. *Shibli Nu'mani*, *Abul Kalam*, *Maulana Muhammad Ali*, *Iqbal* and *Maududi* all represent the original renaissance movement and each one of them gave a new impetus to this movement. *Shibli* tried to inspire confidence in Muslim culture and brought to light the historical role of Islam and of the Prophet of Islam. *Abul Kalam* shook Muslim India from its stupor and called it back to the original message of Islam. *Muhammad Ali* revived the Muslim interest in Indian politics, strengthened the pan-Islamic feelings and championed the *Khilafat Movement* which constitutes the turning point in the modern political history of Muslim India. *Iqbal*, through his poetry and prose, moved the soul of the younger generations and inspired them to re-achieve the glory that is Islam. *Maududi* gave the revivalist trends its new intellectual formulation and organised these forces into an all embracing movement.

This is the intellectual background in which the demand for Pakistan arose. The Pakistan movement was not the making of any one individual. It was the natural crescendo of history and it goes to the credit of *Iqbal* and *Muhammad Ali Jinnah* that they grasped the slow whisper of history and piloted the movement on such lines that within a decade Pakistan became a reality.

1. *Makateeb Shah Ismail*, p. 30 quoted by Ghulam Rasool Mehr, *Sayyid Ahmad Shahid*, Vol. II, Lahore, p. 268.

The idea of Pakistan owes its origin to the belief that Muslims are a nation,<sup>1</sup> an ideological community, and it is a dictate of their faith to establish a state, a society and a culture in the light of the principles given by the Qur'an and the *Sunnah*.

*Iqbal*, while suggesting the idea of Pakistan in his Presidential Address to the Annual Session of All-India Muslim League in 1930, said that :

"The life of Islam as a cultural force in this country very largely depends on its centralisation in a specified territory. This centralisation of the more living portion of the Muslims of India...will eventually solve the problem of India as well as of Asia."<sup>2</sup>

This was essential so that Indian Muslim may become "entitled to full and free development on the lines of his own culture and tradition".<sup>3</sup>

1. To have an idea of how old this concept is let us give a few references:

(1) Al-Beruni who visited Indo-Pakistan sub-continent in the ninth century writes :

"The Hindus entirely differ from us (i.e. the Muslims) in every respect." *Kitab al-Hind*. Tr. by S. Sachau p. 17.

"One might think that they had intentionally changed them (i.e. their customs and ways of living) into the opposite, for our customs do not resemble theirs, but are the very reverse ; and if ever a custom of theirs resembles one of ours, it has certainly just the opposite meaning." (*Ibid.*, p. 197).

(2) Sir Syed Ahmad said in 1862 :

"Is it possible that under these circumstances two nations—the Mohammedans and Hindus—could sit on the same throne and remain equal in power ? Most certainly not. It is necessary that one of them should conquer the other and thrust it down. To hope that both could remain equal is to desire the impossible and the inconceivable." (Quoted by Richard Symond, *The Making of Pakistan*, London, 1951, p. 31).

(3) Sir William Hunter, in his book *The Indian Mussalmans*, speaks of Muslims as a community, a race exhibiting "their old intense feeling of nationality." (W. W. Hunter, *The Indian Mussalmans* Calcutta 1945 ed., pp. 143-144).

2. Muhammed Iqbal, *Speeches and Statements of Iqbal*, compiled by "Shamloo," Lahore, 1948, p. 13.

3. *Ibid.*, p. 11.

Quaid-e-Azam based his plea on the same grounds. During the Jinnah-Gandhi talks he said :

"We claim the right of self-determination as a nation and not as a territorial unit".<sup>1</sup>

In March 1944, while elaborating the concept of Pakistan he said :

"Our bed-rock and sheet-anchor is Islam. We are one and we must move as one nation and then alone we shall be able to retain Pakistan".<sup>2</sup>

In June 1945, he said :

"There is only one course open to us ; to organise our nation. And it is by our own dint of arduous and sustained efforts that we can create strength and support our people not only to achieve our freedom and independence but to be able to maintain it and live according to Islamic ideals and principles.

"Pakistan not only means freedom and independence but the Muslim Ideology which has to be preserved, which has come to us as a precious gift and treasure and which we hope others will share with us".<sup>3</sup>

In November, 1945, he said :

"The Muslims demand Pakistan, where they could rule according to their own code of life and according to their own cultural growth, traditions and Islamic laws.....Our religion, our culture and our Islamic ideals are our driving force to achieve our independence".<sup>4</sup>

"Mr. Liaquat Ali Khan affirmed the same concept of Pakistan when, while moving the Objectives Resolution, he said :

"Pakistan was founded because the Muslims of this sub-continent wanted to build up their lives in accordance

1. Muhammad Ali Jinnah, *Jinnah-Gandhi Talks*, Delhi, 1944, p. 20.
2. Muhammad Ali Jinnah, *Some Recent Speeches and Writings of Mr. Jinnah*, Lahore, p. 89.
3. *Ibid.*, pp. 366-67.
4. *Ibid.*

with the teachings and traditions of Islam, because they warned to demonstrate to the world that Islam provides a panacea to the many diseases which have crept into the life of humanity today".<sup>1</sup>

This was the real concept of Pakistan.

The above discussion clearly shows that :

- (a) The movement for the establishment of Islamic State has a glorious background and the Muslims' demand and support for Pakistan was a part of that very movement.
- (b) The idea behind Pakistan has been the establishment of a country where Islamic State and Islamic society could be established.
- (c) The leaders of the movement made this very promise with the people whose support and unbounded enthusiasm for the demand was motivated by this very Islamic nature of the enterprise.<sup>2</sup>

## IV

### THE IDEOLOGICAL PROBLEM

The real objective behind the creation of Pakistan, as we have discussed earlier, was the establishment of a country wherein the Islamic ideology could be implemented in its

1. Constituent Assembly of Pakistan, *Debates*, Vol. V. p. 3, March 7, 1949
2. Here we may also quote Prof. Smith who in his book *Pakistan as an Islamic State*, says :

"In the case of Pakistan the whole *raison d'être* of the state is Islam : it is Islam alone which holds it together." Wilfred C. Smith, *Pakistan as an Islamic State*, Lahore, 1954, p. 29.

In his recent book *Islam in Modern History*, he says :

"It is this Islamic nature of the State (quite independent of its form) that explains the joyous and devoted loyalty that it initially aroused. The establishment of Pakistan was greeted by its Muslim citizenry with a resurgent enthusiasm, despite the catastrophic terror and chaos of its early months. Indeed, without the stamina and morale generated by religious fervour, the new dominion would hardly have survived the devastations of its first disorders." Wilfred C. Smith, *Islam in Modern History*, op. cit., p. 212.

entirety. The support and the sacrifices of the people were meant for this objective and for nothing else. The natural demand of this situation was that effective steps should have been taken at the very outset to implement this ideology. The support and co-operation of those people who could really guide the Government in this project should have been enlisted. Education, law, administration, commerce and all other fields of national life should have been overhauled in the light of Islamic principles and to make a beginning in this direction, constitution-making should have been expedited and earnestly carried on Islamic lines. But, unfortunately, none of these steps was taken. The leadership failed to come to grips with the ideological problem. It could not give a lead to the nation in this direction. It had fed the people on slogans, but when the hour for the implementation came, it could not deliver the goods. It was from this situation that the ideological conflict arose.

People waited for some time. But gradually they began to become restless. Protests and demands began to pour in. Dissatisfaction and even frustration began to mount. This was the position of the people, but the rulers on the other hand, instead of responding to their call, started dilly-dallying tactics. And as the leadership failed to solve even the non-ideological problems, the confidence of the people was shaken to its roots. Their missionary zeal began to evaporate—and the loss of this spirit has been the greatest loss which the nation has suffered since independence.

Superficially, the conflict was of a political nature. But when one peeps beneath the surface one finds that it was essentially an ideological and a cultural conflict and can be understood only in a wider perspective.

Although the contact of Islam and the Western Civilization began in the seventeenth century, it entered a crucial stage only in the nineteenth and twentieth centuries. In these later periods the political supremacy of the Muslims was on the wane. The Muslim world was succumbing at a rapid pace to

the encroachments of Western imperialism. Under the sheltering care of imperialism, Western education and Western technology were creeping into the world of Islam. New ideas began to fill the air: new techniques began to hold sway. These things shook the old order to its roots. The Muslim world was thrown into convulsion.

Two diametrically opposed reactions emerged in this age of crisis. One was that of undiluted conservatism and the other of unbridled modernism. The conservatives sought refuge in the asylum of old tradition. They became rigid in their outlook and approach. Every change, they thought, would be a change for the worse. So, in their view, the only way to save the Islamic law and culture, in that hour of chaos and confusion, was to stick to the past stubbornly and guard the old order jealously.

The modernists, on the other hand, were swept away with the current of the time. They thought that the royal road to glory lay in the imitation of the West. The Muslim revival, in their view, could be achieved only through adopting Western technique, Western law, Western education, Western culture, and Western modes of thought and behaviour. They saw no contradiction between Islam and the modern West and pleaded for the adoption of Western civilization so that Muslims could also emerge as a progressive nation.

A third trend—that of the Renaissance Islam—had also emerged and was gradually gaining strength. Its political and emotional manifestations were becoming more and more pronounced but lacked a proper intellectual formation which to intents and all purposes was given by Iqbal and Maududi.

After independence, all these three trends became more clear and pronounced and the ideological conflict was the product of the basic attitudes formed by these different approaches to the problem. The modernists inherited the reins of power from the erstwhile British rulers but these people totally failed to understand the language of the people. This gave birth to an ideological schism, the role of Maududi, in



the constitutional and political history of Pakistan, lies in bridging the gulf between the two extremes and in giving classical Islamic thought a new formulation to suit the needs of the modern society.

Careful reflection reveals that neither conservatism nor modernism can deliver the goods.

The conservative approach, represented by the orthodox *ulama*, is unrealistic. It fails to take note of the fact that life is everchanging. History is moving ahead and the society is being moulded into newer shapes. New situations are arising, new relationships are being formed and new problems are emerging. It is imperative to take note of this change and see how the tenets of Islam can be applied to these new conditions. It would be futile to try to put a brake upon change. It would be still more futile to ignore the change altogether and do nothing to meet its demands. The approach which fails to grapple with the problems of the day is bound to fail. It cannot but drive religion out of the flux of life and confine it to the sphere of private life. And when an estrangement is effected between religion and life, then even the private life cannot remain religion's preserve.

Furthermore the conservative elements had not the full understanding of the constitutional, political, economic and cultural problems of the day. The result was that they could not talk the language of today and failed to impress the intelligentsia and the masses alike. They were unable to give a lead in the new ideological situation.

But in all fairness it must be said that the conservative elements did realise their weaknesses and tried to adopt themselves to the movement of the Renaissance Islam. A new awakening had been among them and some sections from among them had begun to gravitate to the middle course. They had their limitations, but they did try to adjust to the new situation.

The modernist approach, on the other hand, has been still more shallow, unrealistic and unsuited to our conditions.

This approach of the so-called liberals is, in fact, not a reform movement, but a naked departure from Islam. They lack an understanding of Islam and try to import all their ideas and concepts from the West. But as they are not bold enough to speak their mind openly and frankly, they try to maintain the Islamic terminology and twist its meaning to suit their ideas. Even a leading Western critic of Islam, Professor Joseph Schacht had to admit that what these 'progressives' are driving at is not Islam, but the very antithesis of it. He writes in a recent essay :—

"The method used by the modernist legislators savours of unrestrained eclecticism ; the 'Independent reasoning' that they claim goes far beyond and that was practised in the formative period of Muhammadan law ; any opinion held at some time in the past is likely to be taken out of its context and used as an argument. On the one hand the modernist legislators are inclined to deny the religious character of the central chapters of the sacred law ; on the other, they are apt to use arbitrary and forced interpretations of the Koran and traditions whenever it suits their purpose. Materially, they are bold innovators who want to be modern at all costs ; formally they try to avoid the semblance of interfering with the essential contents or the sacred law. Their ideals and their arguments come from the West, but they do not wish to reject the sacred law openly as Turkey has done".<sup>1</sup>

We do not say that all modernists lacked sincerity. The sincere among them have been many. But they have failed to realise that the Islamic ideology is basically different from Western secularism. Both have arisen out of different situations. The approach, the thought-pattern and the institutions of the two are different. An imitation of the West, without realising its implications in the Muslim East is bound to breed chaos and

1. Joseph Schacht, *The Law, Unity and Variety in Muslim Civilization*, Ed., G. E. Von Grunebaum, University of Chicago Press, 1965, p. 83.

confusion. It is the lack of realisation of the basic fact which made the creed of the modernists very much akin to Western secularism and the results that their ideas failed to make any deep inroad into the thought and life of the people.<sup>1</sup>

Secondly, they do not realise that the conditions in the Muslim world today are essentially different from those that prevailed in Europe during the periods of Renaissance and Reformation. The history, the traditions, the politico-social institutions and the cultural background of Islam and the modern West are totally different. In such a situation, how can the secular Western institutions work in this part of the world?

Thirdly, people here have no heart for the imitation of the West. They want to have Islam and not Westernism. Their experience of the West has been bitter. The West has humiliated them, rode rough-shod over them, subjugated them and trampled their culture underfoot.<sup>2</sup> They have seen Western imperialism and Western despotism in their stark nakedness and do not want anything more from the West in the realm of values, creed and culture. The modernists have failed to evaluate this situation and are following a course that

1. "One major difficulty for the politician is that his Western education has set a barrier between him and the common man. And nowhere is this barrier stronger than in the field of mutual understanding of the significance of the religion. Pakistan is offered two widely different interpretation of Islam, each claimed to be proper ideological basis of the state. At one extreme the Islam of the politicians, and administrators comes very close to Western secularism....." Prof. Keith Callard, *Pakistan: A Political Study*, London, 1967, p. 280.
2. "In the encounter between the world and the West that has been going on now for four or five hundred years, the world, not the West, is party that, up to now, has had the significant experiences. It has not been the West that has been hit by the world; it is the world that has been hit—and hit hard by the West..... The West (the world will say) has been the arch-aggressor of the modern times. And certainly the world's judgement on the West does seem to be justified over a period of about four and a half centuries ending in 1950."

Arnold J. Toynbee, *The World and the West* (Reith Lectures) London, 1962, pp. 1-4.

one is foredoomed to failure. Not only that such a policy is bound to fail but it will also injure the society in many respects. For instance :

- (a) Such a policy is incompatible with democracy, for the people do not consent to it. And if it is to be carried out, it must be accompanied by despotism and high-handedness.<sup>1</sup>
- (b) Even if it is imposed from above, it will engender a social schism in the society. The resources of the nation will be wasted in mutual conflict between the rulers and the ruled and nothing great can be achieved by a people divided against themselves.
- (c) It will lead to the disintegration of the community and will throw the society in moral confusion and cultural convulsion. Islam is the moral basis of our society and culture and if it is weakened, the moral basis of the society will automatically disintegrate.

The modernists have no realisation of all these grave problems.

Fourthly, the modernists are utterly confused and their perspective is totally blurred. There is no agreement among them as to what they want and how they want to achieve that. Everybody has his own interpretations and the differences amongst them are so acute that no one agreed ideology can be formulated from their viewpoints. Their mutual disagreements have weakened their position beyond repair.

Lastly, they have not proved good administrators and politicians either. The administration of the country has become more and more lax. Corruption has mounted high. The economy has been thrown into one crisis after the other. Political instability has increased. Even respect for law and

1. "I believe this is one of the reasons why such law (i.e. Secular Law) usually has to be put in first by a dictator. It cannot come in as a mass movement because the masses are in the old tradition".

Dr. Filmer S. C. Northrop. *Colloquium on Islamic Culture*, Princeton University Press, 1953, p. 109.

the constitution of the country has dwindled to the lowest ebb. All these things and the way that they have again and again thrown to the winds the most sacred constitutional conventions and modes of doing things and tried to impose by force what their people were not willing to accept through democratic means, have further lowered the prestige of the ideology they want so much to impose. During the last few years all types and brands of the modernists and all possible combinations of them have come to the helm of the country's affairs and proved an utter failure. Their pronouncements might be of some value to a section of foreign observers, but they have utterly failed to impress their people and sweep them to their side. Modernism has lost its shine and flavour. It is on the decline here, there and everywhere and is bound to decline further.<sup>1</sup> As a matter of fact, it is no answer to the ideological challenge of our country.

The creative response to the new challenge came from Islamic revivalist forces, the mainspring of whose guidance has been *Abul A'la Maududi*.

The chief characteristics of this Renaissance approach are as follows :

- (a) The renaissance movement of Islam has as its objective the establishment of the Islamic way of life in its entirety (*Iqāmat-e-din*).
- (b) It has a comprehensive scheme of reform and reconstruction before it and has been influencing life in every department. It is trying to reconstruct the Muslim thought in the light of the Qur'an and *Sunnah* and to meet the intellectual challenge of the West.

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1. "The Westernising middle class of Pakistan has failed to evolve a successful ideology. It has not succeeded in putting forward in this realm anything winnable and feasible, eliciting the intellectual assent, moral commitment, and constructive energy of its own members. It has not persuaded the masses that the programme on which it has embarked is significantly related to their own convictions, aspirations, is calculated to fulfil their hopes". Prof. Wilfred C. Smith, *Islam in Modern History*, op. cit., p. 233.

It is trying to uplift the individual and inspire in him the original Islamic spirit. It is trying to reform the society and rebuild it on the Islamic pattern. It is trying to reconstruct the political life in accordance with the principles given by God and His Prophet. In short, it has been trying to mould the ideas of the people and the thought-pattern of the country, to educate the masses in the Islamic way of life, to mobilise their powers for social and political reforms, and to create general consciousness to bring up a leadership that can carry on the task of Islamic transformation in the country.

- (c) It has avoided the extremes of conservatism and modernism. It neither suffers from narrow-mindedness nor from the inferiority-complex which engenders servile imitation. The renaissance movement has been moving ahead with self-control and self-confidence. It has a clear vision of its objective. It does not want to break away from glorious Islamic traditions. It wants to re-establish real Islam in the world of the twentieth century. It presents the unadulterated teachings of Islam in the language of to-day. It is trying to apply the principles of Islam to the problems of our age and claims that Islam is capable of meeting the challenge of every age and epoch.
- (d) It has been a non-sectarian movement and instead of looking upon the problems from the angle of this sector or that one, it has looked upon them from a broader angle of vision and has avoided all sectarian prejudices. Instead of involving itself in petty trivials, it has been devoted to the basic and fundamental problems and that is why the leaders of the various schools of thought have lent their support to it. This movement has been *national* in the real sense of the word.
- (e) It has adopted democratic and constitutional means to organise the public opinion and bring about necessary

pressure upon the rulers to concede to the people's demand. Public education and not violent agitation, free discussion and not civil disobedience, ballot and not bullet have been its means of work.

- (f) There has been a uniformity of approach and unity of thought among the leaders of this movement and on every occasion they presented an agreed ideology. In the Parliament<sup>1</sup> and outside it<sup>2</sup> they presented the same viewpoint. They responded to the challenge of the rulers that the *ulama* cannot give an agreed concept of Islamic State. In 1951 the leaders of all the schools of Muslim thought unanimously formulated the Basic Principles of an Islamic State.<sup>3</sup> In January 1953 again they almost unanimously presented their comments on the Nazimuddin Report.<sup>4</sup> And in May, 1960 they unanimously formulated their answers to the Questionnaire of the Constitution Commission.<sup>5</sup> This shows the unity of thought and uniformity of approach of all the revivalist groups.
- (g) The platform of the renaissance movement has become the meeting ground or more or less all the sincere and enlightened sections of the country. The conservatives have slowly but gradually moved towards it, and the sincere from amongst the modernists also are coming closer to it. It is becoming the natural *rendezvous* for the extreme groups. The conservatives are becoming less conservatives, and some of the modernists are becoming less modernist. A medium course is being chalked out by the renaissance forces of Islam.

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1. Reference is to *Maulana Shabbir Ahmad Usmani*, M.P.

2. i.e. the public movement of *Maulana Maududi* and *Maulana Ather Ali*.

3. See Appendix I.

4. See Appendix II.

5. See Answers to the Questionnaire of the Constitution Commission by 19 *Ulama* of Pakistan, Lahore May, 1960.

The above analysis shows that as far as the ideological problem is concerned, none but the Renaissance Islam can deliver the goods. Now let us see how the greatest popular movement of the last twelve years—the movement for Islamic Constitution—grew and developed and what leadership the renaissance forces provided in this respect.

## V

### MOVEMENT FOR ISLAMIC CONSTITUTION

As we have shown earlier, the present demand for the establishment of the Islamic way of life has its roots very deep in the history of Muslim India from the early days of seventeenth century down to this day. The establishment of Pakistan has only added a new fervour and given a practical orientation to it. That explains why the Muslims sacrificed their hearths and homes and even their lives for the sake of this homeland in the shape of Pakistan and regarded the dawn of freedom as the dawn of a new Islamic era. Consequently, as soon as the dust of civil disturbances had settled down and the storm of refugee problem had subsided a bit, the question of constitution-making came to the forefront. With the presentation of this problem the demand for Islamic Constitution came up instantly. *Maulana Shabbir Ahmad Usmani* raised the issue in the Parliament. *Maulana Abul A'la Maududi* approached the people, channelised the nation's feelings and aspirations as regards the objectives of the state and formulated the public demand in the form of a fourpoint formula. In February, 1948, he delivered an address at Law College, Lahore and presented this demand which was later on moulded in the form of a resolution which was passed by the people and sent to the Governor-General, the Prime Minister and the President of the Constituent Assembly. The resolution was as follows :

“Whereas the overwhelming majority of the citizens of Pakistan firmly believes in the principles of Islam ; and



whereas the entire struggle and all the sacrifices in the freedom movement for Pakistan were for the sole purpose of establishing these very Islamic principles in all fields of our life :

Therefore now, after the establishment of Pakistan, we the Muslims of Pakistan demand that the Constituent Assembly should unequivocally declare :

- (1) That the sovereignty of the State of Pakistan vests in God Almighty and that the Government of Pakistan shall be only an agent to execute the Sovereign's Will :
- (2) That the Islamic *Shari'ah* shall form the inviolable basic code for all legislation in Pakistan ;
- (3) That all existing or future legislation which may contravene, whether in letter or in spirit the Islamic *Shari'ah* shall be null and void and be considered *ultra vires* of the Constitution ; and
- (4) That the powers of the Government of Pakistan shall be derived from, circumscribed by and exercised within the limits of Islamic *Shari'ah* alone.<sup>1</sup>

As this demand reflected the deepest aspiration of the people and represented their general will, there were echoes soon from all corners of the country and the demand for the acceptance of the Four Points spread like a wild fire. But the power-drunk Westernised group at the helm of affairs refused to respond to the call of the nation. In spite of all their democratic pretensions, they did not care a jot for the voice of the people and cherished the illusion that by resort to methods of suppression and imprisonment, they would cool down the popular enthusiasm. Maududi and some of his colleagues were put into jail. The Safety Act was moved against the newspapers and journals which were very vocal in this campaign. But their hopes proved deceptive, and within a year of the initiation of this demand the Constituent Assembly had to pass the Object-

1. Abul A'la Maududi, *Mutalaba Nizam-e-Islami*, p. 8.

tives Resolution which embodied all the poluts for which the people of Pakistan, with *Maududi* at their helm, had been pressing—a "crime" for which *Maududi* had to rot for twenty months in jail under the Punjab Public Safety Act—a law where the imprisonment of a person is ordered by the Provincial Executive without even letting him to know the charge against him.

With the passing of the Objectives Resolution, the purpose of the State of Pakistan was clearly defined and thus the first round of the fight between the people and their rulers was won by the people. After that, everybody hoped quite naturally that Constitution-making would proceed smoothly. Unfortunately, however, there was plenty of frustration still in store for the people.

When after waiting for an year and a half, the Basic Principles Committee's Report came to light in September 1950, the people were surprised to find that it was a gross and flagrant betrayal of the Objectives Resolution. They protested most vehemently against this betrayal. *Maududi* toured the length and breadth of West Pakistan to mobilise public opinion against it.<sup>1</sup> *The Jamia't al Ulama-e-Islam* took up this work in East Pakistan. And in a very short period such a huge storm of opposition gathered on the political horizon that the report had to be withdrawn—an event which forms a landmark in Pakistan's history. This meant the second defeat for the Westernised ruling group.

Unfortunately, the ruling group did not take the defeat in good grace, and, instead of mending its ways, it started a campaign of blackmail and black-paint against the workers for Islam and also against the very concept of Islamic polity. It was alleged that there was such a severe conflict of opinions among the different schools of Islamic thought that no unanimous version of Islamic Constitution was possible, and it was, therefore, utopian to talk of the establishment of an Islamic State.

1. See *Dasturi Sifairahat par tanqid-o-tahreef*, Lahore, 1950.

Obviously, it was a challenge to Islam. The *Ulama* took it up and a Conference of renowned scholars of all schools of Islamic thought was convened in Karachi in January, 1951. Within three days the Conference formulated unanimously the "Principles of the Islamic State" in the form of 22 Articles and brought to naught the allegation of the Westernised group.<sup>1</sup>

Then came a lull in the political arena. A full eighteen months wore off and nobody ever heard during those days even a whisper about the Constitution. The people became impatient and suspicion quite naturally began to grow as regards the intentions of the political leaders. Consequently, *Maududi* once again stood up in May 1952 to voice the Muslims' sentiments. He criticised the dilly-dallying policy of the Constitution-Makers and put forward his famous demand that the Constitution should be framed before the end of 1952 and that it should embody the following eight points :

- (1) That the Islamic *Shari'ah* shall form the law of the land ;
- (2) That there shall be no such legislation as would contravene any of the dictates or principles of the *Shari'ah* ;
- (3) That all such laws as are in conflict with the dictates or the principles of the *Shari'ah* shall be abrogated ;
- (4) That it shall be incumbent upon the State to eradicate the vices which Islam wants to be eradicated and to uphold and enforce the virtues which Islam requires to be upheld and enforced ;
- (5) That none of the basic civic rights of the people—security of life and property, freedom of speech and expression, and freedom of association and movement—shall be forfeited except when a crime has been proved in an open court of law after affording due opportunity of defence ;
- (6) That the people shall have the rights to resort to a court of law against transgressions on the part of the

1. See Appendix I.

- legislative or the executive machinery of the State ;
- (7) That the Judiciary shall be immune from all interference from the Executive ;
  - (8) That it shall be the responsibility of the State to see that no citizen remains unprovided for in respect of the basic necessities of life, viz, food, clothing, shelter, medical aid and education.<sup>1</sup>

This demand was raised by people belonging to all shades of opinion. The voice grew louder and louder and it was echoed from every nook and corner of the country. The result was that *Kh. Nazim-ud-din*, the then Prime Minister presented the Basic Principles Committee Report in December 1952. It embodied most of the points of demand, but obviously not all of them. A Convention of the Muslim scholars, representing all schools of thought, was again convened in Karachi in January 1953, and the *Ulama* decided to accept the report with certain amendments unanimously formulated by them.<sup>2</sup>

The nation took up the *Ulama's* amendments and demanded their acceptance.<sup>3</sup> But the movement was just gathering momentum when, like a bolt from the blue, came the sudden removal of *Nazim-ud-din* Ministry and the formation of a new Government under the premiership of our ex-ambassador to the U.S.A., *Mr. Mohammad Ali of Bogra*.

1. Later on a ninth point about Qadianis was also included in his demand. This was done to direct into constitutional channels the growing public agitation for the declaration of the Qadianis as a non-Muslim minority and to concentrate the entire force of the people on the constitution problem so that the people may not be sidetracked into subsidiary issues as was the attempt of the high-ups. The ninth point was as follows :

"That the Qadianis shall be included in the list of non-Muslim minorities and their seats shall be reserved according to their population, through separate electorate".

2. See Appendix II.
3. *Maududi* again extensively toured the country to mobilise public opinion. For the historic speech he made on the occasion, see *Abul A'la Maududi, Tashreehat. Supplement to Chiragh-e-Ruh, Karachi, July, 1953.*

With the advent of the new Ministry the stunt of "Provisional Constitution" was put forward, a reign of terror was let loose and the workers of Islam were harassed, persecuted and imprisoned. Despite all this show of tyranny, however, the tempo of the people's demand could not be slowed down. Finally, the stunt of the Provisional Constitution proved abortive and the work of framing a full-fledged Constitution had to be started. The deadlock on "parity" between the two wings of Pakistan was solved in the shape of *Mohammad Ali's* formula, which was adopted by the Constituent Assembly. Most of the *Ulama's* amendments were incorporated in the Report during its adoption by the Constituent Assembly, though some of the important ones were left out. The work progressed rapidly and the Prime Minister of Pakistan promised to give the country a Constitution by the end of 1954. Just at the last hour, however, the Constituent Assembly was dissolved, obviously to enable the Westernists to frame a Constitution of their choice. *Maududi* and his leading supporters were already in jail. *Maududi* was sentenced to death on the flimsy pretext of writing a pamphlet, namely, "The Qadiani Problem", which itself was never hanned! All artifices were used to crush the movement for Islamic Constitution and create confusion amongst the people,<sup>1</sup> but to no avail.

*Maududi* had been put in jail in 1953 for fourteen years, but the struggle went on. In 1955 the new Constituent Assembly was formed and it again started the task of constitution making. The demand for Islamic Constitution again began to mount. *Maududi* who was released in the spring of 1955 because of the nullification of the very law under which he could be detained in jail, now presented his detailed comments upon the draft Bill<sup>2</sup> and mobilised the public opinion in favour of his plea. It was in this context that Constitution of 1956 was formulated and was piloted in the Assembly by *Ch. Muhammad Ali* the then Prime Minister of Pakistan. It was a compromise document, but

1. See Ali Ahmad Khan, *Yeh Qisratiyan Kiun?* (Why these arrests?) Karachi 1953.

2. See Appendix III.

did incorporate the basic demands of the people and at least provided a good ground to stand upon and move ahead. All sections of opinion welcomed it.<sup>1</sup> It was hoped that Pakistan will now turn a new leaf in its political life.

But unfortunately those vested interests which were delaying the framing of the Constitution now began to avoid its implementation and tried to sabotage it from within. Two and a half years passed and they did not even hold the first general elections, much less implement it in its entirety. On the other hand they tried every artifice to avoid its implementation. And at last it was abrogated on 7th October, 1958 by the then President *Major General Iskander Mirza*.<sup>2</sup>

Now the country is once again trying to have a constitution.

This movement for Islamic Constitution has been a popular movement. Thousands of meetings were held to ventilate the demand. Hundreds of processions were carried out in all the major cities of the country. Millions of post-cards, letters and telegrams were sent to the Prime Minister and the Speaker of the Constituent Assembly in support of the demand. Hundreds of deputations met the members of the Constituent Assembly. The demand became so pressing and so widespread that the rulers had to face it in every nook and corner of Pakistan.<sup>3</sup>

This movement is unique in certain respects :

- (a) It was the first popular movement in Pakistan and was carried out on purely democratic lines. A very critical moment came when certain political interests tried to sabotage it by fanning agitation on the *Qadiani*

1. For Maududi's comments on it see Appendix VI.

2. Abul A'la Maududi, *Islamic Law and Constitution*, Ed. Khurehid Ahmad, Karachi, 1955, p. 204.

3. Here it may be mentioned in passing that the English press, controlled by the ultra-modern minority, totally boycotted this movement and did not even have the guts and conscience to report it. If an idea of the extent and popularity of this movement is to be made, resort must be had to the Urdu Press, particularly to *The Daily Tameem*, Lahore, *The Daily Kohistan*, Rawalpindi and Lahore, *The Daily Tameer*, Rawalpindi, *The Daily Shikhar*, Peshawar, *The Daily Jung*, Karachi, *The Daily Anjam*, Karachi; and the *Daily Pashan*, Dacca.

*Problem* to overshadow this movement, but the leaders of the movement very wisely added a new point (the ninth point) to the demand and tried to canalise the agitation on constitutional lines. Although they could not fully succeed in that objective yet the movement for an Islamic Constitution continued to progress on purely democratic and constitutional lines.

- (b) It was unique that the interest of the masses was aroused on such a wide scale on a debate about constitution. Perhaps it can be said without any fear of contradiction that in no other country of the world did the masses take so much interest in constitution-making, as was taken by them in Pakistan.
- (c) The movement was an educative movement and brought the people nearer to the Islamic ideology, made them understand its meaning and prepared them to achieve it through sustained struggle.
- (d) The democratic tradition began to crystallise in the country.
- (e) New literature was produced on the political and constitutional thought of Islam and the Islamic concept was presented with greater clarity and precision.

In the present book our concern is mainly with this last point and we propose to present in it some of the best writings produced in this period.

## VI

### ABOUT THIS BOOK

*Islamic Law and Constitution* is a collection of some of those writings and speeches of *Abul A'la Maududi* which deal with the political and constitutional thought of Islam. *Maududi* is one of the leading thinkers of the world of Islam and his ideas have influenced a generation. It would be of interest and profit for all to see what he has to say on the problems and the prospects of an Islamic State.

The chief contribution of *Maududi* is that he has devoted

himself to the socio-political-cultural aspect of Islam and has discussed those problems which the writers on Islam were avoiding for a long time in the recent past. He has tried to meet the new intellectual challenge of the West and has presented Islam in the language of today. In political thought, his main contribution is that he has not only presented the teachings of Islam in a clear, precise, cogent and convincing way but has also interpreted them for our times and has tried to suggest the form which the Islamic tenets can take to crystallise in the world of twentieth century. This has been a difficult task and he has come to grips with it in an admirable way.

The editor compiled some of his writings on law and constitution in 1955 under the title of *Islamic Law and Constitution*.<sup>1</sup> The book was sold out within one year. It influenced the thinking of the Pakistani intelligentsia and was again and again referred to even in the Assembly debates and the party-meetings. The need of the second edition was pressing for a long time, but the editor was so absorbed in other works that he could not find out sufficient time to devote to this work. He was eager to revise the book thoroughly, because the first edition was prepared while he was a university student. He was conscious of the drawbacks of translation and editing and wanted to improve the book to the best of his ability. He also wanted to make many additions to it and thus make the volume truly representative of Maududi's writings on political and constitutional thought. Now he has tried to do the entire work anew. The book has increased twofold in volume and he hopes that in the present form it will prove much more valuable to the students of Islamic political thought.

The book is being presented with the hope that it will help the people in understanding the concept of Islamic Constitution and of Islamic State. A large number of our own people, who have acquired modern Western education and who are not well-versed in Islamic literature, have not understood properly the

1. Abul A'la Maududi, *Islamic Law and Constitution*, Ed. Khurshid Ahmad, Karachi, 1956, p. 214.



real nature and meaning of an Islamic Constitution. Many of them harbour false notions about Islamic policy and its practice. This book can help them in grasping meaning of the Islamic State.

Then, the ideological character of Pakistan has aroused the interest of foreign students and scholars and they are eager to know what an Islamic Constitution is. This book will enlighten them on this question.

Moreover, throughout the Muslim world there are movements demanding the establishment of the Islamic *Shari'ah*; this book may act as a guiding star to them.

It is hoped that this book may serve the above outlined purposes. A clarification is, however, needed at this stage, *Islamic Law and Constitution* is a collection of some of those writings and speeches of *Abul A'la Maududi* which throw light on the problems of Islamic law and polity. The essays were penned from time to time and the speeches were delivered on different occasions and before different types of audiences, ranging from the uneducated masses to select gatherings of lawyers, legists and students. In spite of that, however, a common thread runs through them all and links them into a unity of purpose. The reader may find some repetition here or there but that is quite natural in a work of this kind.

In the preparation of this book several persons have helped me and I am thankful to them all for their labour of love. I am particularly indebted to *Maulana Zafar Ahmad Ansari*, former Secretary, Board of Taleemat-e-Islamiyah, Constituent Assembly, Pakistan, *Mr. Zafar Ishaq Ansari*, Lecturer in Islamic History, University of Karachi and *Khwaja Abdul Waheed*, Editor, *Al-Islam*, Karachi, for the immense assistance they provided me in translating and reviewing the manuscript. My thanks are also due to my brothers *Anis Ahmad* and *Muslim Sajjad* for checking the references and verifying the quotations from the Qur'an. *Mr. Shahzad Muhammad* typed ungrudgingly my badly written manuscript again and again. I must also confess that the book is seeing the light of the day only because of the

never-failing endeavour of *Chaudhri Ghulam Muhammad Sahib* who has been the main source of stimulus and encouragement.

The book is being presented with the sole purpose of disseminating the view-point of Islam before a world torn by conflicts and devastated by wars. Let it be hoped that it will be received without any bias.

*1, New Queens Road*  
*Karachi, 14th July, 1960*

**KHURSHID AHMAD**

## **PART I**

# **ASPECTS OF ISLAMIC LAW**

## Chapter 1

# THE ISLAMIC LAW

At the stroke of midnight, on August 14, 1947, when the world was asleep, Pakistan was born into existence—Pakistan the homeland of Islam. But the establishment of a full-fledged Islamic society remained a distant hope, because the road was strewn with hardships. Minds were riddled with many a serious misunderstanding and confusion. What, in fact, is Islamic law? Is it practicable in the twentieth century? Would it not mar material progress? Such and the like questions were disturbing many of our modern educated people. *Maulana Maududi* realised the importance of these questions and did not hesitate to answer them and thus refute the mistaken notions of the 'educated folk'. He delivered a speech on the *Islamic Law* on January 6, 1948 at the Law College, Lahore, and delineated the real nature of Islamic Law. The following is the English rendering of that speech.

—Editor.

# THE ISLAMIC LAW

## I

**T**his an irony of fate that, now-a-days, the demand for the enforcement of Islamic Law has become surrounded by such a thick mist of misgivings that a mere reference to it, even in a Muslim country like Pakistan, raises a storm of criticism. Thus, for instance, the questions are asked: Can a centuries-old legal system be adequate to fulfil the requirements of our modern state and society? Is it not absurd to think that the law which had been framed under certain particular circumstances in by-gone days, can hold good in every age and every clime? Do you seriously propose to start chopping off the hands of thieves and flogging human beings in this modern, enlightened age? Will our markets again stand in slaves and deal in the sale and purchase of human beings as chattels and playthings? Which particular sect's legal system is going to be introduced here? What about the non-Muslim minorities who will never tolerate the dominance of the Muslim religious law and will resist it with all the force at their command? One has to face a volley of such questions while discussing the problem, and, strenuously enough, not from non-Muslims but from the Muslim educated elite!

To be sure, these questions are not the outcome of any antagonism towards Islam but mostly of sheer ignorance which must quite naturally breed suspicion. And to our utter misfortune, ignorance abounds in our ranks. We have people who are otherwise educated but who know practically nothing about their great ideology and their glorious heritage. No wonder, then, that they labour under strong prejudices.

This state of degradation, however, has not come as a bolt from the blue; it is, rather, the culmination of a gradual process of decay spread over many centuries. Commencing with stagnation in the domains of knowledge and learning, research and discovery and thought and culture, it finally culminated in our

political breakdown, making many a Muslim country the slave of non-Muslim imperialist powers. Political slavery gave birth to an inferiority-complex and the resultant intellectual servitude eventually swept the entire Muslim world off its feet, so much so that even those Muslim countries which were able to retain their political freedom could not escape its evil influence. The ultimate consequence of this evil situation was that when Muslims woke up again to the call of progress, they were incapable of looking at things except through the coloured glasses of Western Thought. Nothing which was not Western could inspire confidence in them. Indeed, the adoption of Western Culture and Civilization and aping the West even in the most personal things became their craze. Eventually, they succumbed totally to the slavery of the West.

This trend towards Westernism was also the result of the disappointment which came to the nation from the side of the Muslim religious leaders. Being themselves the victims of the wide-spread degeneration that had engulfed the entire Muslim world they were incapable of initiating any constructive movement or taking any revolutionary step which could combat the evils afflicting the Muslim society. Quite naturally, this disappointment turned the discontented Muslims towards that system of life which had the glamour of being successful in the modern world. Thus they succumbed to the onslaughts of modern thought, adopted the new culture of the West and began to ape blindly Western modes and manners. Gradually, the religious leaders were pushed into the background and were replaced, as regards power and control over the people, by men bereft of all knowledge of their religion and imbued only with the spirit of modern thought and Western ideals. This is why we find that many a Muslim country has, in the recent past, either completely abrogated the Islamic Law or confined its operation to the domain of purely personal matters only—that is, a position conferred on the non-Muslims in a truly Islamic State.<sup>1</sup>

1. The first country where the abrogation of Islamic Law started was India, although the *Shari'ah* continued in force long after the British had come

In all those Muslim countries, which suffered from foreign domination, the leadership of political and cultural movements fell into the hands of those who were shorn of all Islamic background. They adopted the creed of Nationalism, directed their efforts towards the cause of national independence and prosperity along secular lines and tried to copy, step by step, the advanced nations of this age. Consequently if these gentlemen feel vexed with the demand for Islamic Constitution and Islamic Laws, it is quite natural for them. It is also natural for them to sidetrack or suppress the issue, as they are ignorant of even the A.B.C. of the Islamic *Shari'ah*. Their education and intellectual development has alienated them so completely from the spirit and the structure of Islamic ideology that it is, at least for the moment, very difficult for them to understand such demands.

As regards the Muslim religious leadership, it has in no way fared better, because our religious institutions are tried to the intellectual atmosphere of the fifth century A.H., as a consequence of which they have not been able to produce such

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into power. So much so that the penalty of severing the hand of habitually hardened thief was awarded as late as 1791 A.D. Thereafter the process of suppression began till at last by the middle of the nineteenth century, the whole of the *Shari'ah* had been abrogated, excepting of course injunctions regarding purely personal matters like marriage, divorce, etc. Other states where Muslims themselves were in power, took their cue from the Muslims of India and the leading part in this transition was taken by the Muslim Native States of India. In 1884, Egypt changed over her own laws to *Code Napoleon* leaving only matter of divorce, marriage and inheritance to the jurisdiction of the *Qadis*. In the twentieth century Turkey and Albania took a further lead over their fellow Muslim states and not only proclaimed themselves to be completely secular States and not only proclaimed themselves to be pattern of those of Italy, France, Switzerland and Germany, making such inroads on Muslim personal law itself as no non-Muslim state would dare do. Albania led the way by penalizing polygamy and Turkey followed her by changing the mandatory provisions of the Holy *Qur'an* in respect of divorce and inheritance. There now remain only Afghanistan and Saudi Arabia where the *Shari'ah* is accepted as the State Law though even there the spirit of the *Shari'ah* has long since disappeared and the whole of *Shari'ah* too is not being enforced.

leaders of Islamic thought and action as could be capable of administering the affairs of a modern state in the light of Islamic principles. This is the situation prevailing throughout the Muslim world and is, indeed, a very real obstacle facing the Islamic countries in their march towards the goal of Islamic renaissance.

Notwithstanding certain similarities, the case of Pakistan is not, however, the same as that of other Muslim countries. This is so because it has been achieved exclusively with the object of becoming the homeland of Islam. For the last ten<sup>1</sup> years, we have been ceaselessly fighting for the recognition of the fact that we are a separate nation by virtue of our adherence to Islam. We have been proclaiming from house-tops that we have a distinct culture of our own, and that we possess a world view, an outlook on life and a code of living fundamentally different from those of non-Muslims. We have all along been demanding a separate homeland for the purpose of translating into practice the ideals envisaged by Islam, and at least, after a long and arduous struggle, in which we sustained a heavy loss of life and property and suffered deep humiliation in respect of the honour and chastity of a large number of our womenfolk, we have succeeded in attaining our cherished goal—this country of Pakistan. If, now, after all these precious sacrifices, we fail to achieve the real and ultimate objective of making Islam a practical, social, political and constitutional reality—a live force to fashion all facets of our life, our entire struggle and all our sacrifices become futile and meaningless.

Indeed, if instead of an Islamic, a secular and Godless Constitution was to be introduced, and if instead of the Islamic *Shari'ah*, the British Civil and Criminal Procedure Codes had to be enforced, what was the sense in all this struggle for a separate Muslim homeland? We could have had them without that. Similarly, if we simply intended to implement any socialistic programme, we could have done so in collaboration with the Communist and the Socialist parties of India without

1. Remember that this speech was delivered in 1948.—Editor.



plunging the nation into this great bloodbath and mighty ordeal.

The fact is that we are already committed before God, Man and History for the promulgation of Islamic Constitution and the introduction of Islamic way of life in this country and no going back on our words is possible. Whatever the hurdles and howsoever great they may be, we have to continue our march towards our goal of a full-fledged Islamic State in Pakistan.

No doubt, there do exist many hardships and difficulties in the way of achieving this goal. But what great goal can be or has ever been achieved without facing difficulties boldly and intelligently? And I must emphatically say that the difficulties which impede our way are in no way insurmountable. Indeed, none of them is real except the difficulty that many among those who hold the reins of power are devoid of faith in the efficacy of the Islamic ideology which, in its turn, is not due to any defect in Islam but is purely a product of their own gross ignorance of the Islamic teachings.

The first task, therefore, is to explain to our educated people the meaning and the implications of Islamic law,—its objectives, its spirit, its structure, and its categorical and unchangeable injunctions along with the reasons for their permanence. They should also be informed of the dynamic element of Islamic Law and how it guarantees the fulfilment of the ever-increasing needs of progressive human society in every age. Then, they should be enlightened in regard to the rational foundations of the *Shari'ah*. Finally it is also needed to expose the hollowness of the vituperative criticisms against Islam and to remove thereby the fog of misunderstandings that shroud the issue. If once we succeed in accomplishing this task and consequently gaining the support of Muslim intelligentsia, we will pave the way for the establishment of an Islamic state and the creation of an Islamic society in Pakistan. It is with this intention that I am making this speech before the students of the Law College.

## II LAW AND LIFE

The term "Law" bears reference to the query: "What should be the conduct of man in his individual and collective life?" The query presents itself to us in connection with innumerable matters. Hence its reply covers a very wide range of topics, wider than what the term "Law" technically signifies. It includes our system of education and training in the light of which we strive to mould the character of individuals; it comprehends our social system which regulates our social relationships; it encompasses our economic order according to which we formulate the principles of production, distribution and exchange of wealth. Thus we possess a vast system of rules which determine our conduct in various walks of life. Technically speaking, all these acts of rules are not "Law".

The term "Law" is technically applied only to such of the rules as are enforceable by the coercive power of the State. But, obviously, no one who wants to understand them, can afford to confine his attention to them alone. He must take into consideration the entire scheme of moral and social guidance prescribed by a particular ideology, because it is only then that he will be able to appreciate the spirit and objectives of the "Law" and to form a critical opinion about its merits and demerits.

It should not be difficult to understand that the principles we recommend relating to a particular system of life are basically derived from and are deeply influenced by our conceptions about the ends of human life and by our notions of right and wrong, good and evil and justice and injustice. Consequently, the nature of a legal system depends entirely upon the source or sources from which it is derived. Thus, the differences discernible in the legal and social systems of different societies are mainly due to the differences of their sources of guidance and inspiration.

This means that unless we are prepared to take into consideration the origins and the background of the whole system

of life and of the society which it brings into existence and to appreciate the complete process of the development of that system and the evolution of that society, we will not be able to understand, much less to criticise on any rational basis, the mandatory legal provisions of the system—especially when our knowledge of those provisions consists, in the main, of hearsay and conjecture.

I do feel that a comparative critical study of the Islamic and the Western system of life would be the best way to explain and elucidate my view-point. If the differences between the original sources and the basic postulates of both the systems are kept in mind, radically different schemes of life that both envisage can be easily understood. But the paucity of time at my disposal does not permit such a digression, and consequently, I shall confine myself, at present, to the exposition of the Islamic *Shari'ah* only.

### Sources of the Islamic System of Life

The first source of the Islamic system of life is a book, or to be more exact, "The Book". The world received several editions of it under the titles of the Old Testament, the New Testament, the Psalms, etc., the last and the final edition being the one presented to mankind under the name of the *Qur'an*.

The second source of this system are the persons to whom the different editions of the Book were revealed and who, by their preachings and their conduct, interpreted them to the people. As different personalities, they bore the names of Noah, Abraham, Moses, Jesus and Muhammad (peace be on them all) but as the bearers and upholders of the same mission of life, all stand under the general title of "The Messenger".

### The Islamic Concept of Life

The view of life which Islam has presented is that this universe of ours, which follows a set course of law and functions according to an intelligent and well-laid-out plan is in reality the Kingdom of the One God—*Allah*. It is He Who created it. It is He Who owns it. It is He Who governs it. The earth on which we live is just a small part—a province—of

this huge universe and like all other parts thereof, it also functions completely under the control of God. And as regards ourselves—i.e., we human beings—we are nothing more than His "born subjects". It is He Who created us, sustains us and causes us to live. Hence, every notion of our *absolute independence* is nothing but a sheer deception and misjudgement. God controls every fibre of our being and none can escape His grip.

Every thinking mind is aware of the fact that a very large sector of our life is governed and directly controlled by a High Power and with such absoluteness that we are practically helpless in respect of it. From the time we are conceived in the wombs of our mothers till the moment we breathe our last, we are subject to God's inexorable Laws of Nature to such an extent that we cannot claim to be free from their control even for a single moment.

Of course there is another sphere of our life in which we possess a certain amount of freedom. This is the moral and social sphere of life in which we are bestowed with a free-will and independence of choice in respect of individual as well as collective affairs and behaviour. But this independence can hardly justify our rejection of the Guidance of our Creator and His Laws. It is only to give us a choice leading our lives as the obedient subjects of God—an attitude consistent with the real order of things—or of being disregarding of His commandments and thus rebel against Him and our true nature.

Obviously, to the faithful, the Guidance and Law of God is the truest and most consistent attitude for mankind. It sets the standard for the orderly behaviour of man both individually and collectively and in respect of the highest as well as the smallest task he may have to face. Having once accepted the philosophy of life enunciated by "Book" and "The Messenger" as the embodiment of Reality, one has no justification for not obeying God's revealed Guidance in the sphere of one choice also. Indeed, it is but rational that we should admit God's sovereignty in this sphere as well just as we are perforce doing in the domain of our physical life. And this for several reasons :

Firstly, the power and the organs through which our free-will functions, are gifts from God and not the result of our own efforts.

Secondly, the independence of choice itself has been delegated to us by God and not by us through our personal endeavour.

Thirdly, all those things in which our free-will operates are not only the property but also the creation of God.

Fourthly, the territory in which we exercise our independence and freedom is also the territory of God.

Fifthly, the harmonisation of human life with the universe dictates the necessity of there being one Sovereign and a common Source of law for both the spheres of human activity—the voluntary and the involuntary, or in other words the moral and the physical. The separation of these two spheres into watertight compartments led to the creation of an irreconcilable conflict which finally lands not only the individuals but even biggest nations in endless trouble and disaster.

The Final Book of God and the Final Messenger stand today as the repositories of this truth, and they invite the whole of humanity to accept it freely and without compulsion. God Almighty has endowed man with free-will in the moral domain, and it is to this free-will that this acceptance bears reference. Consequently, it is always an act of volition and not of compulsion. Whosoever agrees that the concept of Reality stated by the Holy Prophet and the Holy Book is true, it is for him to step forward and surrender his will to the will of God. It is this submission which is called '*Islam*' and those who do so i.e., those who of their own free-will accept God as their Sovereign and surrender to His Divine will and undertake to regulate their lives in accordance with His commandments are called '*Muslims*'.

All those persons who thus surrender themselves to the will of God are welded into a community and that how the "*Muslim Society*" comes into being. Thus, this is an ideological society—a society radically different from those which spring from accidents of races, colour of country. This society is the result

of a deliberate choice and effort ; it is the outcome of a "contract" which takes place between human beings and their Creator. Those who enter into this contract undertake to recognise God as their Sovereign, His Guidance as supreme, and His injunctions as absolute law. They also undertake to accept, without question, or doubt, His classification of Good and Evil, Right and Wrong, the Permissible and Prohibited. In short, the Islamic society agrees to limit its volition to the extent prescribed by the All-Knowing God. In other words, *it is God and not Man whose will is the Source of Law in a Muslim Society.*

When such a Society comes into existence, the Book and the Messenger prescribe for it a code of life called *Shari'ah*, and this society is bound to conform to it by virtue of the contract into which it has entered. It is, therefore, inconceivable that any Muslim Society worth the name can deliberately adopt a system of life other than the *Shari'ah*. If it does so, its contract is automatically broken and the whole society becomes "un-Islamic".

But we must clearly distinguish between the everyday sins of individuals and a deliberate revolt against the *Shari'ah*. The former may not imply breaking the contract, while the latter would mean nothing less. The point that should be clearly understood here is that if an Islamic society consciously resolves not to accept the *Shari'ah* and decides to enact its own constitution and laws or borrow them from any other source in disregard of the *Shari'ah* such a society breaks its contract with God and forfeits its right to be called 'Islamic'.

### III

## THE OBJECTIVES AND CHARACTERISTICS OF THE *SHARI'AH*

Let us now proceed to understand the schema of life envisaged by the *Shari'ah*. To understand that, it is essential that we should start with a clear conception of the Objectives and the Fundamentals of the *Shari'ah*.

The main objective of the *Shari'ah* is to construct human life on the basis of *Ma'rufat* (virtues) and to cleanse it of the *Munkarat* (vices). The term *Ma'rufat*, denotes all the virtues and good qualities that have always been accepted as "good" by the human conscience. Conversely *Munkarat* denotes all the sins and evils that have always been condemned by human nature as "evil". In short, the *Ma'rufat* are in harmony with human nature and its requirements in general and the *Munkarat* are just the opposite. The *Shari'ah* gives a clear view of these *Ma'rufat* and *Munkarat* and states them as the norms to which the individual and social behaviour should conform.

The *Shari'ah* does not, however, limit its function to providing us with an inventory of virtues and vices ; it lays down the entire scheme of life in such a manner that virtues may flourish and vices may not contaminate human life.

To achieve this end *Shari'ah* has embraced in its scheme all the factors that encourage the growth of good and has recommended steps for the removal of impediments that might prevent its growth and development. This process gives rise to a subsidiary series of *Ma'rufat* consisting of the causes and means initiating and nurturing the good and further of *Ma'rufat* consisting of prohibitions of preventives to good. Similarly there is subsidiary list of *Munkarat* which might initiate or allow growth of evil.

The *Shari'ah* shapes the Islamic society in a way conducive to the unfettered growth of good, virtue and truth in every sphere of human activity, and gives full play to the forces of good in all directions. And at the same time it removes all impediments in the path of virtue. Alongwith it, this attempts to eradicate evil from its social scheme by prohibiting vice, by obviating the causes of its appearance and growth, by closing the inlets through which it creeps into society and by adopting different measures to check its occurrence.

### **Ma'rufat**

The *Shari'ah* classifies *Ma'rufat* into three categories :

The Mandatory (*Fard and Wajib*)

### The Recommendatory (*Ma'rub*), and The Permissible (*Mubah*).

The observance of the mandatory (*Ma'rufat*) is obligatory on a Muslim society and the *Shari'ah* has given clear and binding directions about them. The recommendatory (*Mo'rufat*) are those which the *Shari'ah* wants that a Muslim society should observe and practise. Some of them have been clearly demanded of us while others have been recommended by implication and deduction from the Sayings of the Holy Prophet (peace be upon him). Besides this, special arrangements have been made for the growth and encouragement of some of them in the scheme of life enunciated by the *Shari'ah*. Others still have simply been recommended by the *Shari'ah*, leaving it to the society or to its more virtuous elements to look to their promotion.

This leaves us with the permissible *Ma'rufat*. Strictly speaking, according to the *Shari'ah* everything which has not been expressly prohibited by it is a permissible *Ma'rufat*. It is not at all necessary that an express permission should exist about it or that it should have been expressly left to our choice. Consequently the sphere of permissible *Ma'rufat* is very wide, so much so that except for a few things specifically prohibited by the *Shari'ah*, everything is permissible for a Muslim. And this is exactly the sphere where we have been given freedom and where we can legislate according to our discretion, to suit the requirements of our age and conditions.

### Munkarat

The *Munkarat* (or the things prohibited in Islam) have been grouped into two categories: *Haram* (i.e., those things which have been prohibited absolutely) and *Makruh* (i.e., those things which have been simply disliked). It has been enjoined on Muslims by clear and mandatory injunctions to refrain totally from everything that has been declared *Haram*. As for the *Makruh* the *Shari'ah* signifies its dislike in some way or the other, i.e., either expressly or by implication also as to the degree of such dislike. For example there are some *Makruh* bordering on *Haram*, while others bear affinity with the acts



which are permissible. Of course, their number is very large ranging between the two extremes of prohibitory and permissible actions. Moreover, in some cases explicit measures have been prescribed by the *Shari'ah* for the prevention of *Makruh*, while in others such arrangements have been left to the discretion of the society or to the individual.

### **The Characteristic of the *Shari'ah***

The *Shari'ah* thus prescribes directives for the regulation of our individual as well as collective life. These directives touch such varied subjects as religious rituals, personal character, morals, habits, family relationships, social and economic affairs, administration, rights, and duties of citizens, judicial system, laws of war and peace and international relations. In short, it embraces all the various departments of human life. These directives reveal what is good and bad, what is beneficial and useful and what is injurious and harmful, what are the virtues which we have to cultivate and encourage and what are the evils which we have to suppress and guard against, what is the sphere of our voluntary, untrammelled, personal and social action and what are its limits, and finally, what ways and means we can adopt in establishing such a dynamic order of society and what methods we should spurn. The *Shari'ah* is a complete scheme of life and an all-embracing social order where nothing is superfluous, and nothing is lacking.

Another remarkable fact about the *Shari'ah* is that it is an organic whole. The entire scheme of life propounded by Islam is animated by the same spirit and hence any arbitrary division of the scheme is bound to harm the spirit as well as the structure of the *Shari'ah*. In this respect it might be compared to the human body which is an organic whole. A leg pulled out of the body cannot be called one-eighth or one-sixth man, because after its separation from the living human body, the leg can no more perform its human function. Nor can it be placed in the body of some other animal with any hope of making it human to the extent of the limb. Likewise, we cannot form a correct opinion about the utility, efficiency and beauty of the hand, the eye or

the nose of a human being separately, without judging its plain and function within a living body.

The same can be based in regard to the scheme of life envisaged by the *Shari'ah*. Islam signifies the entire scheme of life and not any isolated part or parts thereof. Consequently, neither can it be appropriate to view the different parts of the *Shari'ah* in isolation from one another and without regard to the whole, nor will it be of any use to take any particular part and bracket it with any other "ism". The *Shari'ah* can function smoothly and can demonstrate its efficacy only if the entire system of life is practised in accordance with it and not otherwise.

Many of the present-day misunderstandings about the *Shari'ah* owe themselves to this faulty attitude in judging its worth, namely, forming opinions about its different aspects separately. Some injunctions of it are isolated from the main body of the Islamic Law and then they are considered in the perspective of modern civilization, or they are viewed as if they were something completely self-contained. Thus, people take just one injunction of the *Shari'ah* at random, which becomes maimed after its removal from the context, view it in the context of some modern legal system, and criticise it on the score of its incongruity with present-day conceptions. But they fail to realise that it was never meant to be isolated for it forms an organic part of a distinct and self-contained system of life.

There are some people who take a few provisions of the Islamic Penal Code out of their context and jeer at them. But they do not realize that those provisions are to be viewed with the background of the whole Islamic system of life covering the economic, social, political and educational spheres of activity. If all these departments are not working, then those isolated provisions of our Penal Code can certainly work no miracles.

For example, we all know that Islam imposes the penalty of amputating the hand for the commitment of theft. But this injunction is meant to be promulgated in a full-fledged Islamic society wherein the wealthy pay *Zakat* to the state and the state provides for the basic necessities of the needy and the

destitute ; wherein every township is enjoined to play host to visitors at its own expense for a minimum period of three days ; wherein all citizens are provided with equal privileges and opportunities to seek economic livelihood ; wherein monopolistic tendencies are discouraged ; wherein people are God-fearing and seek His pleasure with devotion ; wherein the virtues of generosity, helping the poor, treating the sick, providing for the needy prevail to the extent that even a small boy is made to realize that he is not a true Muslim if he allows his neighbour to sleep hungry while he has taken his meal. In other words, it is not meant for the present-day society where you cannot get a single penny without having to pay interest ; where in place of *Baitul Mal* there are implacable money-lenders and banks which, instead of providing relief and succour to the poor and the needy, treat them with callous disregard, heartless refusal and brutal contempt ; where the guiding motto is : "Everybody for himself and devil takes the hindmost" ; where there are great privileges for the privileged ones while others are deprived even of their legitimate rights ; where the economic system, propelled by greed and piloted by exploitation, only leads to the enrichment of the few at the cost of crushing poverty and intolerable misery of the many, and where the political system serves only to prop up injustice, class-privileges and distressing economic disparities. Under such conditions, it is doubtful if theft should be penalised at all, not to speak of cutting off the thief's hands ! Because to do so would, as a matter of fact, amount to protecting the ill-gotten wealth of a few blood-suckers rather than awarding adequate punishment to the guilty.<sup>1</sup>

1. Here it must not be misunderstood that I am defending theft or any other form of lawlessness. Not the least ! My intention is only to show the vast and radical differences that reign between the context in which the punishment *was* and *is* applicable and the state of affairs we are today enveloped in. The only logical conclusion that follows is the need for a change in the entire system of life. When the entire structure of society is changed and a new way of life is established, the incongruity between the injunction and the present context of affairs would be obliterated and the avenue for its application would be opened.

On the other hand, Islam aims at creating a society in which none is compelled by the force of circumstances to steal. For, in the Islamic social order, apart from the voluntary help provided by individuals, the state guarantees the basic necessities of life to all. But, after providing all that, Islam enjoins a severe and exemplary punishment for those who commit theft, as their action shows that they are unfit to live in such a just, generous and healthy society and would cause a greater harm to it, if left unchecked.

Similar is the case of the punishment for adultery and fornication. Islam prescribes a hundred stripes for the unmarried and stoning to death for the married partners in the crime. But, of course, it applies to a society where every trace of suggestiveness has been destroyed, where mixed gatherings of men and women have been prohibited, where public appearance of painted and pampered women is completely non-existent, where marriage has been made easy, where virtue, piety and charity are current coins and where the remembrance of God and the hereafter is kept ever fresh in men's minds and hearts. These punishments are not meant for that filthy society wherein sexual excitement is rampant, wherein nude pictures, obscene books and vulgar songs have become common recreations; wherein sexual perversions have taken hold of the cinema and all other places of amusement, wherein mixed, semi-nude parties are considered the acme of social progress and wherein economic conditions and social customs have made marriage extremely difficult.

## IV

### LEGAL ASPECTS OF THE SHARI'AH

From this discussion, I think, it has become fairly clear that what we, at present, technically call 'Islamic Law' is only a part of a complete scheme of life and does not have any independent existence in isolation from that scheme. It can neither be understood nor enforced separately. To enforce it

separately would, in fact, be against the intention of the Law-Giver. What is required of us is to translate into practice the entire Islamic programme of life and not merely a fragment of it. Then and then alone can the legal aspects be properly implemented.

This scheme of the *Shari'ah* is, however, divided into many parts. There are aspects of it which do not need any external force for their enforcement ; they are and can be enforced only by the ever-awake conscience kindled by his faith in a Muslim. There are other parts which are enforced by Islam's programme of education, training of man's character and the purification of his heart and his morals. To enforce certain other parts, Islam resorts to the use of the force of public opinion ; the general will and pressure of the society. There are still other parts which have been sanctified by the traditions and the conventions of Muslim society. A very large part of the Islamic system of law, however, needs for its enforcement, in all its details, the coercive powers and authority of the state. Political power is essential for protecting the Islamic system of life from deterioration and perversion, for the eradication of vice and the establishment of virtue and, finally, for the enforcement of all these laws that require the sanction of the state and the judiciary for their operation.

Speaking from a purely juridical view-point it is this last part, out of the whole Islamic scheme of life, that the term "Law" can be appropriately applied. For, it is only those injunctions and regulations which are backed by political authority that are, in modern parlance, termed as "law". But as far as the Islamic conception is concerned the entire *Shari'ah* stands as synonymous with "law", because the whole code of life has been decreed by the All-Powerful Sovereign of the universe. However, to avoid confusion, we shall apply the term "Islamic Law" to those portions of the *Shari'ah* only which demand the sanction of, the State-power for their enforcement.

## Major Branches of Islamic Law

The establishment of a political authority which may enforce Islamic Law requires a Constitutional Law, and the *Shari'ah* has clearly laid down its fundamentals. The *Shari'ah* has provided answers to the basic questions of Constitutional Law and has solved its fundamental problems, viz., What is the basic theory of the State? What is the source of the authority of its legislation? What are the guiding principles of state-policy? What are the qualifications of the rules of an Islamic State? What are the objectives of an Islamic State? In whom does sovereignty reside and what are the different organs of the State? What is the mode of the distribution of power between the different organs of the State, viz., the Legislature, the Executive and the Judiciary? What are the conditions for citizenship? What are the rights and duties of Muslim citizens? and What are the rights of non-Muslim citizens (*Zimmis*)? The guidance which the *Shari'ah* has provided in respect to these questions constitutes the constitutional law of Islam.

Besides laying down the fundamentals of Constitutional law, the *Shari'ah* has also enunciated the basic principles of Administrative Law. Besides that, there are *precedents* in administrative practice established by the Holy Prophet himself (peace be upon him) and the first four rightly-guided Caliphs of Islam. For instance, the *Shari'ah* enumerates the source of income permissible for an Islamic State and those, which are prohibited. It also prescribes the avenues of expenditure. It lays down rules of conduct for the Police, the Judiciary and the Administrative machinery. It defines the responsibilities of the rulers regarding the moral and material well-being of the citizens, laying particular emphasis on their obligations as regards the suppression of vice and the establishment of virtue. It also specifically states as to what extent the State can interfere with the affairs of its citizens. In this connection, we find not only detective principles but also many categorical injunctions. The *Shari'ah* has given us

the broad framework of Administrative Law—exactly in the same way as it has given the fundamentals of Constitutional Law and has left it to the discretion of the Muslims to build up the details in accordance with the demands of the age or country in which they live—subject, of course, to the limits prescribed by the *Shari'ah*.

Proceeding further, we find the *Shari'ah* guiding us in connection with Public as well as Personal Law—which are essential for the administration of justice. This guidance covers such an extensive field that we can never feel the need of going beyond the *Shari'ah* for meeting our legislative requirements. Its detailed injunctions are such that they can always fulfil the needs of human society in every age and in every country—provided, of course, that the entire Islamic scheme of life is in operation. They are so comprehensive that we can frame detailed laws for every emergency and every fresh problem on their basis for which the legislature has been given the right of legislation. All laws thus framed are to be considered an integral part of the Islamic Law. That is why the laws framed by our jurists in the early days of Islam for the sake of "Public Good" form a part and parcel of the Islamic Law.

Lastly, we have that part of the Law which deals with the relations of the Islamic State with other states, i.e., the International Law. In this connection, too, the *Shari'ah* gives us comprehensive regulation relating to war and peace, neutrality and alliance, etc. Where, however, no specific injunctions are to be found, the laws can be framed in the light of the general directives as laid down in their behalf.

### **Permanence and Change in Islamic Law**

This brief classification and elucidation shows that the guidance of the *Shari'ah* extends to all the branches of law which have been evolved by the ingenuity and need of the human mind so far. This is a standing testimony to the independence of the Islamic Law and its inherent potentialities. Anybody who takes the trouble of making a detailed study of

the subject will be able to distinguish between the part of the *Shari'ah* which has a permanent and unalterable character and is, as such, extremely beneficial for mankind, and that part which is flexible and has thus the potentialities of meeting the ever-increasing requirements of every time and age.

The unalterable elements of Islamic Law may be classified under the following heads :

- (1) Those laws that have been laid down in explicit and unambiguous terms in the Qur'an or the authentic Traditions of the Prophet, like the prohibition of alcoholic drinks, interest and gambling the punishment prescribed for adultery and theft and the rules for inheritance etc.
- (2) The directive principles laid down in the Holy Qur'an and authentic Traditions, e.g., prohibition of the use of intoxicants in general, or the nullification of all exchange transactions which are not the outcome of the free-will of both the parties, or the principle that men are protectors and in charge of women.
- (3) The limitations imposed on human activity by the Qur'an and the Traditions of the Prophet, which can never be transgressed, e.g., the limitation in connection with the plurality of wives where the maximum number has been fixed at four, or the limitation that the number of divorces to a wife cannot exceed three, or the limitation imposed on a will, the amount of which cannot exceed one-third of the total inheritance etc.

It is these unalterable mandatory provisions of the Islamic Law which give a permanent complexion to the Islamic Social Order and the characteristic features to its Culture. In fact, one cannot find a single culture in the entire history of mankind which can retain its separate entity and its distinct character without possessing an unalterable and permanent element.

If there are no permanent elements in a culture and every part of it is subject to change, amendment and modification, it is not an independent culture at all. It is just like a fluid,



which can take any and every shape and can always suffer transfiguration and metamorphosis.

Moreover, a thorough study of these directives, injunctions and limitations will lead every reasonable man to the conclusion that they have been given to us by the *Shari'ah* only for those matters where the human mind is likely to commit errors and go astray. On all such occasions, the *Shari'ah* has, so to say, set the signposts by issuing directives of making categorical prohibitions so that we may proceed along the right path. And these signposts far from impeding the march of human progress, are meant to keep us along the road and to save us from skidding away. In this connection, it might not be out of place here to refer to the laws of the *Shari'ah* governing marriage, divorce and inheritance which were the target of very bitter criticism in the recent past. It is these very laws, however, to which the world is now turning for guidance, though after innumerable bitter experiences!

The second part of Islamic Law is that which is subject to modification according to the need and requirements of the changing times and it is this part of the Islamic Law which endows it with wide possibilities of growth and advancement and makes it fully capable of fulfilling all the needs of an expanding human society in every age.

This part consists of the following:—

- (a) *Ta'weel* (Interpretation): It consists in probing into the meanings of the injunctions found in the *Qur'an* and the *Sunnah*. As such, it has always occupied and still occupies a place of immense importance in Islamic Jurisprudence. When those endowed with penetrating insight and legal acumen ponder over the injunctions of the *Qur'an* and the *Sunnah*, they find that many of them are open to different fruitful and valid interpretations. Consequently, every one of them accepts some particular interpretation according to his lights on the merits of the case. In this way, the doors of difference of opinions have always been open in the past, are open even today, and will continue to remain so in the future.

- (b) *Qiyas* (Deduction by Analogy) : It consists in applying to a matter with respect to which there is no clear guidance, a rule or injunction available for some similar matter.
- (c) *Ijtihad* (Disciplined Judgment of Jurists) : It consists in legislating on matters for which neither any explicit injunctions nor even precedents exist, subjects of course, to the general principles and precepts of the *Shari'ah*.
- (d) *Istisnā* (Juristic Preference) : It means framing rules, if necessary, in non-prohibited matters in conformity with the spirit of the Islamic legal system.

Any one who considers the possibilities inherent in the above-mentioned four ways of legislation, can never reasonably entertain any misgivings as to the dynamism, adaptability, progressive nature and power of evolutionary growth of the legal system of Islam. But it should be remembered that every Tom, Dick and Harry is not entitled to exercise the right of *Ta'weel*, *Qiyas*, *Ijtihad*, *Istisnā*. Nobody has ever recognised the right of every passer-by to give verdict on problems of national importance. Undoubtedly, it requires profound legal knowledge and a trained mind to enable one to speak with authority on any legal matter.

Similar is the case with the Islamic Law. Obviously, to achieve the status of a jurist one should be fully conversant with Arabic language and literature. He should also have a complete grasp of the real, historical background of the injunctions of Islam. He should have special insight into the Qur'anic style of expression. He should have a thorough knowledge of the vast literature on the Traditions of the Holy Prophet as well as of the Traditions themselves.

In the special field of analogue deduction, a Muslim jurist is required to possess a keen sense of legal judgment and the requisite capacity for interpretation of facts on the basis of analogy; otherwise it would not be possible for him to save himself from falling into errors. As regards *Ijtihad*, or original

legislation, it requires the jurist to have not only a deep knowledge of Islamic Law but also a developed sense of interpreting matters in the true Islamic spirit. Similarly as regards *Istihsan* or the consideration of public good and legislation for that purpose it calls for a complete understanding of the entire Islamic scheme of life as also a complete grasp of the spirit of Islam so that he may adopt only those things which can be appropriately assimilated in the Islamic Scheme and which do not amount to driving square pegs in round holes.

And, over and above all these intellectual accomplishments, there is another thing which is vitally essential, and that is unstinted devotion and loyalty to Islam and a deep sense of accountability before God. As regards those who care little for God and of the Final Accountability, whose watch-word in life is sheer expediency, and who prefer the non-Islamic values of culture and civilization to those given by Islam, they must be regarded as the last persons to whom the work of Islamic legislation can be entrusted. For, in their hands, the Islamic Law will only suffer perversion and corruption. It will not grow, evolve and prosper.

## AN EXAMINATION OF OBJECTIONS ON ISLAMIC LAW

We shall now try to examine briefly some of the objections usually raised against the demand for the introduction and enforcement of Islamic Law in Pakistan. These objections are many but it would be an unnecessary waste of time to mention all of them here. Therefore I propose to confine to the examination of those objections only which are of a fundamental nature.

### 1. "Islamic Laws are Antiquated"

The first objection that is raised is that, as the Islamic Laws were framed thirteen centuries ago in the light of the requirements of a primitive society, they cannot be of any use for a modern state of our age.

I doubt very much whether people who take this stand are

conversant even with the rudiments of the Islamic Law and possess even an elementary knowledge of it. Perhaps, they have heard from somewhere that the fundamentals of the Islamic Law were enunciated more than thirteen hundred years ago, and they have assumed that this Law has remained static since then and has failed to respond to the requirements of changing conditions of human life. On this misconception they have further assumed that Islamic Law will be unsuited to the needs of the present-day society and will clog the wheels of progress. These critics fail to realize, however, that the laws propounded thirteen and a half centuries ago, did not remain in a vacuum; they formed part and parcel of the life of Muslim society and brought into being a *State* which was run in the light of these laws. This naturally provided an opportunity of evolution of Islamic Law from the earliest days, as it had to be applied to day-to-day matters through the process or *Ta'weel Qiyas, Ijtihad* and *Istihsan*.

Very soon after its inception, Islam began to hold sway over nearly half the civilized world stretching from the Pacific to the Atlantic and during the following twelve hundred years, the Islamic Law continued to be the law of the land in all Muslim states. This process of the evolution of Islamic Law, therefore, did not stop for a moment up to the beginning of the nineteenth century, because it had to meet the challenge of the ever-changing circumstances and face countless problems confronting different countries in different stages of history. Even in our Indo-Pakistan sub-continent, the Islamic Civil and Penal Codes were in vogue up to the beginning of the nineteenth century.

Thus, it is only for the last one hundred years that the Islamic Law remained inoperative and suffered stagnation. But, *firstly*, this period does not form a big gap and we can easily make up for the loss with some amount of strenuous effort; *secondly*, we possess full records of the development of our jurisprudence century by century and there can be absolutely no ground for frustration or despondency. Our path of legal pro-

gress is, thus, fully illumined.

Once we have grasped the fundamental principles and the basic facts concerning the evolution of the Islamic system of Law, we cannot remain in doubt that this law shall be as responsive to the urges of a progressive society in the present and the future as it has been in the past. Only those who suffer from ignorance can fall a prey to such nonsense, while those who have a grasp of Islam and the Islamic Law, are aware of its potentialities of progress and those who possess even a cursory knowledge of the history of its development, can never suspect it of being an antiquated or a stagnant system of law, incapable of keeping pace with the march of history.

## 2. "Islamic Laws are Relics of Barbarism" 1

The second most common objection—an objection which is put forward publicly only in a round-about manner but which is presented with much vehemence and venom in private talks—is that Islam is just a relic of the Dark Ages ! And those who say so also argue, with an air of haughtiness and arrogance, that the "progressive, cultured and humane" outlook of the modern, enlightened age can never tolerate such "cruel" penalties as the cutting of the hands, or flogging, or stoning to death—penalties imposed by Islam for certain crimes.

This objection and this allegation, coming as it does from the supporters, of modern Western civilization, makes one gasp with wonder. It is, indeed, amazing to hear that the normal values of the present age are "advanced" and "progressive". The heartlessness shown by the "enlightened" man of today to his fellow beings hardly finds a parallel in the darkest ages of history. He does not punish by stoning to death, but he can kill people indiscriminately with the atom bomb. He does not merely cut off the hands of the people but he also tears their bodies into shreds. He is not content with flogging, he would like to burn alive the people *en masse* and manufacture soap out of the fat extracted from their dead bodies.<sup>1</sup> Leaving aside

1. This was done in Germany, one of the most "progressive" countries in the world—Editor.

these demonstrations of heartlessness during the period of war wherein everything is considered fair nowadays, the modern man brutally chastises—and does it unsparingly—the political “criminals”: the alleged “traitors” to the national cause and the rivals in the economic and political fields. The highly objectionable and inhuman modern methods of investigation and extortion of confession employed even before proving the charges, are an open secret. In view of these facts, it is non-sensical to say that the modern man cannot tolerate the punishments prescribed by Islam for proved and established criminals because he possesses a more refined outlook; and it does not lie in the mouth of those who can tolerate bloody “purges” after concocted confessions and phoney trials and who uphold political inquisitions and concentration camps, to pour out venom against the Islamic Penal Code.<sup>1</sup>

The truth is that it is not the severity of the punishments in Islam which the upholders of modern civilization abhor, for they resort to even more tortuous punishments themselves. The reason for their hysteric outbursts against this alleged “barbarism” lies actually in the perversion of moral value—that is, in the fact that they do not think that crimes like drunkenness and adultery deserve even a word of reproach, what to speak of painful punishments. Had they been opposed to these punishments on humanitarian considerations, they would have likewise condemned the brutal punishments given to people on flimsy political and economic grounds. They complain in respect of Islam only because they do not at all deem as a sin or crime many a thing condemned by it.

I would like to put a straight question to these varieties of “modernity”: “What are the values that you believe in? Do

1. Prof. E. F. M. Durbin, after narrating the callous and inhuman treatment which is being meted out in the most “progressive” states of the world, concludes that: “such large-scale brutality has rarely been witnessed. I am thankful to say, in the previous history of the world” *The Politics of Democratic Socialism*, 1948, p. 25).

See also Khurshid Ahmad, *Fanaticism, Intolerance and Islam*, Islamic Publications Limited, Lahore, 2nd ed., 1980—Editor.

you believe in the Islamic values of life and standards of morality or those of the modern civilization" ? If you have made your choice and accepted some other values and some different standard of right and wrong, of virtue and vice, of the permissible and the prohibited as against those envisaged by Islam, it is then a difference of a very fundamental nature. It means that you differ with and disbelieve in the Islamic ideology itself. In this case you should have the courage to declare that you reject Islam outright. Is it not foolish to allege faith in a God Whose laws you consider as barbarous ? Anyhow nobody can remain inside the pale of Islam after holding such an opinion about the law of God.<sup>1</sup>

### 3. The Bogey of Sectarian Differences

We have dealt with two objections so far. The third objection is that there being many schools of Islamic Jurisprudence, it is not possible to evolve an agreed code of law which might be acceptable to all the schools of Muslim thought. It is this objection on which rests the last hope of the opponents of the Islamic Law, and they seem to feel confident that on this count they will be able to score a point by driving a wedge among the Muslims. Moreover, this problem also baffles many sincere people who are loyal to Islam and who, not being fully conversant with its teachings, fail to

1. Here the learned author is replying to those critics who claim to be Muslims but under the spell of alien influences want to amend the basic tenets of Islam, without any regard for the spirit and ideals of Islamic ideology. They are apologetic in their attitude and want to blow hot and cold in the same breath.

As to the question whether the punishments are too harsh or not, he has already answered in the earlier part of the discussion. Islam creates such conditions as may ensure the elimination of the causes of the commission of crimes. But, if, in spite of it, the evil does commit them, Islam punishes the criminals in such a way that others may not dare to do that. That is why we find that when these punishments were in vogue, crimes were extinct while today, despite all the clap-trap, crimes are on the increase and we hear voices from social quarters that the standards of punishments are proving incapable of grappling with the problem.—*Editor.*

understand how the 'complication' can be removed. The fact is that this complication is merely a figment of fertile imagination, for, the existence of different schools of law can never become an obstacle in the way of the enforcement of Islamic Law.

The first point to be understood in this connection is that the broad outlines of Islamic Law, consisting of mandatory and unalterable commandments and fundamental principles and limitations have always been accepted unanimously by all the Muslim schools of thought. Neither there ever was, nor there is now, any conflict of opinion regarding this portion of our laws. Whatever differences had ever arisen were always in connection with the details that were to be framed through interpretation, deduction and *Ijtihad*—all, of course, within limits prescribed by Islam.

The nature of these differences can also be understood by the fact that rules derived by jurists through interpretation, deduction, *Ijtihad* or *Istisna* could never acquire the force of law without either being accepted unanimously (*Ijma'*) or having the approval of the majority (*Jamhoor*). This explains why the phrases like *عليه الاجماع* (unanimous agreement), *عليه الجمهور* (majority agreement) and *عليه الفتوى* (adopted judgement) are appended to the expression of final opinions by our jurists in discussing legal matters, and it signifies that their opinion had finally to obtain legal sanction in order to become a law for Muslims.

These unanimous or majority decisions can be of two kinds :

*Firstly*, those which have always been accepted by the entire Muslim world or by the majority of Muslims.

*Secondly*, those based on the unanimous agreement of the Muslims of a particular country at a particular period, or of their majority.

Decisions coming under the first category, if based on unanimous agreement, are not subject to review and should always be accepted as part and parcel of Muslim Law.



Decisions made by majority agreement can be accepted as law only if the majority of the Muslims of the country wherein they have to be promulgated also accepts them, as such. If the majority of that country accepts them, they will become a law for this country, otherwise not.

So much about the past. As for the future, the laws which are accepted unanimously by majority of the Muslims of this country, will be enacted here. In the past too, this has been the practice and no law used to operate without either the unanimous approval or the approval of the majority of the Muslims. And it is this method which is practicable even today. I do not think that any other procedure can be prescribed from the democratic point of view either.

A question may be asked as to what would be the position of those Muslims who might not agree with the majority.<sup>1</sup> They are entitled to demand the enforcement of their own Code in their personal matters and this demand of theirs must be accepted. But, of course, the "Law of the Land" shall be the one which has the sanction of the majority.

I am sure that no Muslim of any sect would ever adopt the foolish position of preferring the continuance of un-Islamic laws in Pakistan on the ground that he is not in agreement with the views of the majority of Muslims on certain points of Islamic Law. Obviously we cannot discard the Islamic way of life simply because we are not unanimous on all details of its law. Has there ever been or can there ever be any law or system of life on all details of which all its followers were, are or can ever be unanimous? What do you say about the legal system, that is in force in the country at present or anywhere else?

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1. This objection was blown up by the complete agreement of the 'Ulama' of all schools of thought in the Conventions held in 1951 and 1953 at Karachi. In those Conventions, the 'Ulama' unanimously formulated the Basic Principles of the Islamic State (see Appendix I) and also moved Amendments to the Basic Principles Committee's Report (see Appendix II). This objection, therefore, has absolutely no ground.—*Editor*.

#### 4. The Problem of Non-Muslim Minorities

The last important objection in this respect is that there is a substantial non-Muslims minority living in Pakistan who cannot tolerate being governed by the religious laws of the Muslims.

This objection is based on a very superficial observation and shows a lack of proper analysis of the problem. For even a little amount of cool thinking can dissipate the fog of this misunderstanding.

The law with which we have been and are concerned here is the law of the land and not the personal law of any community. In personal matters every community is welcome to adopt its own personal law. Indeed, it is only Islam which guarantees this right in the most liberal manner to all the minorities living in an Islamic State. It is Islam which has taught to the modern world the real difference between the 'law of the land' and the 'personal law' and which enunciated the principle that in a multinational state the personal affairs of a man should be settled according to his own Personal Law. Therefore, no minority group should feel afraid that we would thrust our own religious laws on them in their personal matters, and shall, thus, violate an injunction unambiguously laid down by Islam itself.

The question that now remains to be dealt with is : What should be our 'law of the land' ? I think it is the demand of justice and fairness that the Law which commands the approval of the majority alone has the right to become the Law of the Land.

Minorities are entitled to demand 'safeguards for their legitimate rights and interests and we are bound to concede this demand as Islam itself enjoins us to do so. But it is not fair for the minorities to ask us to throw our ideology overboard and introduce laws which are against our convictions merely for the sake of appeasing them. When we were helpless because of foreign domination, we tolerated the supremacy of un-Islamic Laws. But now when we are masters of our destiny, we cannot

replace Islamic Law by those of any other type without conscious apostasy and betrayal of Islam. Are the minorities really entitled to ask the majority to give up its religion and its way of life? Have they the right to demand that the majority should give up the principles which it considers right and adopt others which are against its convictions? Or, is it reasonable that in a multi-religious country all the communities should become irreligious? If the answers to all these questions are in the negative, I find no reason why 'Islamic Law' should not become the 'Law of the Land' in a country where Muslims are in a predominant majority.<sup>1</sup>

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1. Moreover, the true position is that the representatives of the Christians in the First Constituent Assembly of Pakistan and some of the leaders of the scheduled castes, who form the most important minority, have demanded the establishment of an Islamic State, for they hold that their rights can be better safeguarded in such a state. They know that an Islamic State does not permit any chasm to exist between precept and practice. All Muslims are under an obligation to do what their religion commands. And if they violate, they can do so only at the cost of their own religion—nay, their very faith and salvation.—*Editor.*

## Chapter 2

### Legislation and 'Ijtihad' in Islam

*MAULANA ABUL A'LA MAUDUDI* read a paper entitled 'Role of *Ijtihad* and Scope of Legislation in Islam' at the Colloquium on Islamic Culture held at Lahore in January 1958. He was a delegate from Pakistan and was also a member of the Organising Committee of the Colloquium. This paper constitutes first section of the present chapter. Its second section consists of the reply which he gave to the objections raised at his said paper. The third and the last section has been taken from a note of *Maulana Maududi* which he wrote in reply to a query and which was published in *Chigrah-e-I'lah*, *Islami Qanoon* Number, Vol. II (Vol. 12 : No. 7).—Editor.

## LEGISLATION AND 'IJTIHAD' IN ISLAM

**F**OR an adequate appreciation of the subject under discussion, two basic facts have to be clearly borne in mind, viz ;

- (i) the Sovereignty of God, and
- (ii) the Prophethood of Muhammad (peace be upon him).

Islam admits of no sovereignty except that of God and, consequently, does not recognise any Law-giver other than Him. The Concept of the unity of God, as advocated by the Qur'an, is not limited to His being the sole object of worship in the religious sense alone. Along with it, He is invested with complete 'legal sovereignty', in the sense in which the term is understood in Jurisprudence and Political Science. This aspect of the legal sovereignty of God is as much and as clearly emphasised by the Qur'an as the one pertaining to His being the only deity to be worshipped. According to the Qur'an these twin facets of the Divinity of God are the *sine qua non* of the Divine Entity and are so vitally interlinked that a negation of either *ipso facto* infringes the very concept of His divinity. And the Qur'an leaves no room for the impression that the divine law may mean merely the law of nature and nothing more. On the contrary, it rears the entire edifice of its ideology on the basis that mankind should order the affairs of its ethical and social life in accordance with the law (*Shari'ah*) that God has communicated through His Prophets (may His blessings be on them). It is this submission to the revealed law and surrender of one's freedom to it that has been assigned the name of Islam (surrender) by the Qur'an. It denies in the clearest terms the light of man to exercise any discretion in such matters as have been decided by Allah and His Prophet (peace be upon him).

Says the Qur'an :

"It is not for the faithful, man or woman, to decide by themselves a matter that has been decided by Allah

and His messenger, and whoever commits an affront to Allah and His messenger is certainly on the wrong path". (33 : 36)

# I

## PROPHETHOOD OF MUHAMMAD (pbuh)

The second point which is as fundamental in Islam as is the Unity of God, is the finality of the Prophethood of Muhammad (may God's blessings be on him). It is really because of this factor that the concept of the Unity of God transforms itself from an abstract idea into a practical system and the whole edifice of the Islamic way of life is raised upon this foundation. According to this concept the teachings of all the earlier messengers of Allah have been incorporated, with numerous important additions and alterations in the teachings of Muhammad (may God's blessings be on him). Hence those teachings constitute the only source of Divine guidance and law, as no further revealed guidance is to come to which it may become necessary for mankind to turn. It is this dispensation by Muhammad (may God's blessings be on him) that constitutes the SUPREME LAW which represents the Will of God, the real Sovereign. This Law has been bequeathed to us by the Holy Prophet (peace be upon him) in two forms :

First : the Qur'an which embodies, word by word, the instruction and commandments of God and is His unadulterated word.

Second : the ideal conduct of Muhammad (may God's blessings be on him), that is to say *Sunnah*, which clarifies, explains and exemplifies the meaning of the Qur'an.

In fact the Holy Prophet was not merely the bearer of a message having nothing more to do than transmitting the Word of God to mankind. He was also the Divinely appointed leader, the ruler and the teacher.<sup>1</sup> The duty laid on him was to explain<sup>2</sup>

1. Al-Qur'an, 61 : 9 ; 3 : 164 ; 62 : 2—*Editor*.

2. Al-Qur'an, 16 : 41 and 64—*Editor*.

and illustrate the law of God by his words and deeds, to make people understand its real import, to train individuals and form them into a disciplined body, and with their aid to initiate a struggle for the reconstruction of society, and finally, to mould the society into a reformed and reforming state and thus to demonstrate how an ideal civilization, founded on the principles of Islam, could be established. This entire life-work of the Holy Prophet, which was completed in twenty-three years of his prophethood, is the *Sunnah* which in conjunction with the Qur'an formulates and completes the Supreme Law of the real Sovereign and this Law constitutes what is called "*Shari'ah*" in Islamic terminology.

## SCOPE OF LEGISLATION

From what has been stated heretofore one is apt to think that these fundamental facts leave no room for human legislation in an Islamic State, because herein all legislative functions vest in God and the only function left for the Muslims lies in their observance of the God-made law vouchsafed to them through the agency of the Prophet. The fact of the matter, however, is that Islam does not totally exclude human legislation. It only limits its scope and guides it on right lines. Human legislation, according to Islam, is and should be subject to the Supremacy of Divine Law and within the limits prescribed by it.

Now I proceed to describe the scope and limits of this legislation which, in Islam, takes the following four forms :

### 1. Interpretation

In certain matters the Qur'an and the *Sunnah* have laid down clear and categorical injunctions and proscribed specific rules of conduct. In such matters no jurist, judge, legislative body, not even the *Ummah* as a whole, can alter the specific injunctions of the *Shari'ah* or the rules of behaviour expounded by it. This does not mean, however, that there is no scope left for legislation in this sphere. The function of human legislation in relation to such matters lies in

- (a) finding out exactly and precisely what the law is ; its nature and extent,

- (b) determining its meaning and intent,
- (c) investigating the conditions for which it is intended and the way in which it is to be applied to the practical problems,
- (d) working out minor details in the case of such laws as are too brief for a straightaway application in actual life, and
- (e) determining the extent of its applicability or non-applicability in case of exceptional circumstances.

## 2. Analogy

Then there are those types of problems about which although no specific injunctions have been laid down in the *Shari'ah*, but provisions have been made about some analogous situations. In this sphere the function of the legislature would be to apply such injunctions, after a precise appreciation of the reasons and causes underlying them, to all those matters wherein identical causal connections actually exist and to exempt all such cases from their application wherein these connections are non-existent.

## 3. Inference

There is yet another category of human affairs about which the *Shari'ah* has prescribed no specific guidance but has laid down broad principles or indicated the intention of the Lawgiver as to what is to be encouraged and what is to be discouraged. In regard to such affairs, the function of the legislature is to understand the principles of the *Shari'ah* and the intention of the Law-giver and formulate such laws about the practical problems as are based on these principles and fulfil the intention of the Law-giver.

## 4. Province of Independent Legislation

Apart from these, there is yet another vast range of human affairs about which the *Shari'ah* is totally silent. It has neither made any direct provision in respect thereof nor is there any guidance for identical or kindred situations so as to enable us to draw an analogical inference therefrom. This silence is by itself



indicative of the fact that the Supreme Law-giver has left it to human beings to decide such matters in their own discretion and judgement. Hence independent legislation can be resorted to in such cases but it must be in consonance with the real spirit of Islam and its general principles and, what is more important, should in no way be repugnant to the general pattern and temperament of Islam. It must naturally and appropriately fit into the general scheme of the Islamic ideology.

## IJTIHAD

The whole of this legislative process which makes the legal system of Islam dynamic and makes its development and evolution in the changing circumstances possible, results from a particular type of academic research and intellectual effort which, in the terminology of Islam, is called *Ijtihad*. Literally the word *Ijtihad* means to put in the maximum of effort in performing a job but technically it signifies 'maximum effort to ascertain, in a given problem or issue, the injunction of Islam and its real intent'. Some persons seem to be labouring under the erroneous impression that *Ijtihad* means completely independent use of one's opinion. But no one conversant with the nature of the Islamic Law can imagine that there can be any place for this kind of independence in the legal system of Islam. The real law of Islam is the Qur'an and the *Sunnah*. The legislation that human being may undertake must essentially be derived from this Fundamental Law or it should be within the limits prescribed by it for the use of one's discretion or the exercise of one's opinion. For *Ijtihad* that purports to be independent of the *Shari'ah* can neither be an Islamic *Ijtihad* nor is there any room for such an incursion in the legal system of Islam.

### Essential Qualifications

It is clear from what has been said above that the purpose and object of *Ijtihad* is not to replace the Divine Law by man-made law. Its real object is to properly understand the Supreme Law and to impart dynamism to the legal system of Islam by keeping it in conformity with the fundamental guidance of the

*Shari'ah* and abreast of the changing conditions of the world. In view of this basic fact, no healthy *Ijtihad* is possible unless our law-makers are equipped with the following qualifications :

- (1) Faith in the *Shari'ah* and conviction of its truthfulness ; a sincere intention to follow it ; absence of any desire to act independently of it : and the will to derive inspiration and acquire all objectives, principles and values from it and not from any other source.
- (2) A proper knowledge of the Arabic language, its grammar and literature because the Qur'an has been revealed in this language and the means of ascertaining the *Sunnah* also depend upon this medium.
- (3) Such knowledge and insight in the teachings of the Qur'an and the *Sunnah* as would enable one not only to be conversant with the details of Islamic injunctions and their application in actual practice but fully to appreciate the basic principles of the *Shari'ah* and its objectives. One should know, on the one hand, the *Shari'ah's* over-all reform scheme from human life and, on the other hand, the exact place of each aspect of life within the frame-work of this comprehensive scheme, the lines on which the *Shari'ah* desires to mould human life and society and the objectives underlying it. In other words, such knowledge of the Qur'an and the *Sunnah* is the *sine qua non* of *Ijtihad* as would enable one to grasp the kernel of the *Shari'ah*.
- (4) Acquaintance with the contributions of the earlier jurists and thinkers (*Mujtahidin*) of Islam. This is necessary not merely for training in the technique of *Ijtihad* but also for the sake of ensuring continuity in the evolution of law. Of course it is not, and should not be, the purpose of *Ijtihad* that every generation may necessarily destroy or discard what previous generations have built and thus try to build the whole structure afresh.

- (5) Acquaintance with the problems and conditions of our times—the new problems of life to which an answer is sought and the new conditions in which the principles and injunctions of the *Shari'ah* are to be applied. A correct appreciation of the current problem is extremely essential for the proper exercise of *Ijtihad*.
- (6) Commendable character and conduct according to the Islamic ethical standard. Absence of this virtue is bound to affect adversely the quantum of public trust in the legislators. A law made by the *Ijtihad* of unworthy individuals, devoid of good moral character, is not likely to inspire respect and confidence in the Muslim people.

The above description of the essential qualifications does not entail that any one undertaking *Ijtihad* should produce a certificate before the commencement of his assignment that he is fully possessed of them. Rather the idea is merely to show that a healthy development of Islamic law on proper lines through *Ijtihad* is possible only if the system of legal training and education starts producing learned men of such calibre and qualifications. Any legislation undertaken without these requisites would neither fit into the legal system of Islam nor would it ever be palatable to the Muslim society to accept and digest it.

### Technique of *Ijtihad*

Just as *Ijtihad* and any legislation based thereon depends for its popular acceptance on the ability of those responsible for it, similarly its success would, to a large degree, depend upon the employment of a correct method and proper technique. A *Mujtahid*, whether he is engaged in the interpretation of injunctions or is busy in analogical reasoning or in drawing inferences, has, in any event, to base his reasoning on the Qur'an and the *Sunnah*. Even while indulging in 'independent legislation' in the sphere of permissible (*Mubahat*) he must clearly establish that the Qur'an and the *Sunnah* have not laid down any rule or order nor even have furnished a basis for any analogy for that

particular issue. Furthermore, the methods adopted for putting construction on the Qur'an and the *Sunnah* should be reasonable and well-recognised. While arguing from the Qur'an it is imperative to interpret the meaning of a verse in accordance with the requirements of the language, i.e., Arabic lexicography, grammar and established usage which should fit into the context of the verse and may not be in conflict with the observations made elsewhere in the Qur'an on the same topic. In addition to that, if it is not positively supported by word or deed of the Prophet, at least the *Sunnah* be not contrary to such meaning. While drawing upon the *Sunnah* in consonance with the considerations of language, its rules and the context, it is also essential that the traditions which are relied upon about a particular matter are authentic ones in accordance with the principles concerning this branch of knowledge (of Traditions), that other relevant traditions are not ignored and no single citation (*Khabar-e-Wahid*) is allowed to hold its own against a *Sunnah* that has been well-established on the strength of authentic sources. Any *Ijtihad* based on wishful interpretation and in disregard to these precautions even, if raised to the status of law by dint of political power, will neither be accepted by the collective conscience of the Muslim community nor can it form an integral part of Islamic system of law. As soon the political power enforcing such a law disappears from the political arena, such a law would be thrown into the dustbin.

#### How Ijtihad attains the status of law

A number of methods have been recognised in the legal system of Islam whereby an *Ijtihad* acquires the force of law. *Firstly*, consensus of opinion (*Ijma'*) by the learned men of the community. *Secondly* the *Ijtihad* of an individual or a group of individuals may gain wide popularity and people may *suo moto* adopt their verdict, for instance, the *Ijtihad* of the Hanafite, the Shafe'ite, the Malikite, and the Hanbalite schools of law were voluntarily accepted by large groups of Muslim masses. *Thirdly*, a Muslim government may adopt a particular piece of *Ijtihad*

as its law, as for example the Ottoman government had adopted the Hanafi Law as the Law of the Land. *Fourthly*, an institution may be constitutionally empowered in an Islamic State to legislate and it may enact a particular piece of *Ijtihad* in the form of law. Apart from these four methods, any *Ijtihad* performed by various Muslim scholars can be no more than a verdict (*fatwa*). As regards the judicial pronouncement of the judges (*Qadis*), they are enforceable as law only in respect of the particular case in which a court may have pronounced them and they may also have the force of a precedent but they cannot be classified as law in the true sense of the term so much so that even the judicial pronouncements of the Right Guided Caliphs—given by them in their judicial capacity as *Qalis*—did not acquire in Islam the force of law. The concept of the “judge-made-law” is foreign to the legal system of Islam.

## II

### THE PLACE OF SUNNAH IN ISLAMIC LAW

I will try to answer as briefly as possible the criticism that has been offered on my paper on : ‘The Role of *Ijtihad* and the Scope of Legislation in Islam.’

1. The first criticism relates to the status that has been assigned to ‘*Sunnah*’ along with the Qur’an. In dealing with this I should like to mention a few points in a certain sequence so that the problem may be clarified.

(i) It is an irrefutable historical fact that after receiving the prophetic assignment, Muhammad (peace be upon him) did not stop at the mere transmission of the Qur’an to the people but led an all-comprehensive movement which resulted in the evolution of an organised Muslim society, a new system of civilization and culture, and the establishment of a state. The question arises : In what capacity did the Prophet perform those functions which were in addition to the mere transmission of the Qur’an ? Were these tasks performed in his prophetic capacity in which he represented the will of God in the same way as it is represented in the form of the Holy Book ? Or did his prophetic

status and with the transmission of the Qur'an and thereafter he merely acted like an ordinary Muslim individual whose words and deeds did not possess in themselves any legal authority? If the former, then there is no alternative but to accept the *Sunnah* as possessing legal authority along with the Qur'an. If the latter, then of course there can be no ground for treating it as law.

(ii) The Qur'an gives a very clear verdict in this matter by stating that Muhammad (peace be on him) was not merely a messenger but a divinely-appointed leader, ruler and teacher as well, rendering obedience to whom is obligatory on the Muslims and whose life had been put forward by God as an ideal to be followed by the faithful. Reason and intellect fail to conceive that a prophet is to be treated as such to the extent merely of transmitting the word of God and, thereafter, he is reduced to the level of a common man. In so far as the Muslims are concerned they have, from the advent of Islam up to this day, unanimously upheld, in every age and clime, that the Holy Prophet was an ideal to be imitated, and his injunctions and inhibitions were obligatory on the believers. Even a non-Muslim student of Islam cannot deny the fact that the Muslims have always assigned this position to the Holy Prophet and on this very basis his *Sunnah* has been treated, along with the Qur'an, as a source of law in the legal system of Islam. I cannot indeed imagine how anyone can challenge this legal aspect of the *Sunnah* unless he takes up the position that the Holy Prophet was a prophet only in so far as he transmitted the Holy Book and his prophetic status ended with the performance of this duty. And if anyone puts forward such a claim he will have to state whether he is assigning this position to the Holy Prophet on his own or whether the Holy Qur'an itself has assigned it to him. In the first case his stand would be no concern of Islam at all, while in the second case he will have to adduce some proof of his claim from the Holy Book.

(iii) On accepting the *Sunnah* as a source of law, the question arises as to how it can be ascertained. How can we find

out what *Sunnah* had been bequeathed by the Prophet who was raised so many centuries ago? In this connection it should be remembered that this is not a problem with which we are confronted for the first time after the lapse of 1377 years. The following two historical facts are incontrovertible.

The first one is that the community and the society which were formed on the basis of the teachings of the Qur'an and the *Sunnah* of the Holy Prophet, on the very first day of the advent of Islam, has been continuously in existence; its life was not interrupted by a single day and its institutions have been working all the time without any break. The deep similarity which exists at present among the Muslims the world over in respect of their beliefs, modes of thinking, ethical standards and values, acts of worship and mundane affairs and in their social concept and ways of life (wherein the elements of similarity are more than those of disparity and which is the largest fundamental factor in keeping them together as an *Ummah* despite being scattered all over the surface of the earth) is a positive proof of the fact that this society was established on a *Sunnah* and that tradition has continued without interruption throughout these long centuries. There is no "missing link" for which we may have to search in darkness.

The second historical fact which is equally potent is that the Muslims have, in every age, after the death of the Holy Prophet, been endeavouring consistently to ascertain what exactly his established *Sunnah* is, and whether any novel factor (*bid'a*) was entering into their system of life through some forged means. They neither were nor could afford to be careless about investigating and ascertaining the *Sunnah* because it had the status of law for them, it formed the basis of judicial decisions in their law-courts, and all their affairs, were being managed in accordance with it. The means of this research and the results thereof have been bequeathed to us from generation to generation, from the time of the first Islamic Caliphate right up to our own times, and the labours of each generation have been fully preserved. If one understands these

two historical facts fully and properly and then makes a scientific study of the means by which *Sunnah* is to be ascertained, he will never fall a prey to any misgiving that he is faced with some insoluble puzzle.

(iv) There is no doubt that there have been numerous differences in the matter of ascertaining and establishing the *Sunnah* and such differences can also arise in future. But then similar differences have occurred, and many indeed will occur in future, even in the matter of interpreting a good many rules and injunctions of the Holy Qur'an. If such differences cannot form an argument for giving up the Qur'an why should they be made an excuse for giving up the *Sunnah*? The principle has been accepted in the past (and even now there is no alternative but to accept it) that whoever puts forward anything as the injunction of the Qur'an or the injunction of the *Sunnah* should produce his arguments in support of his claim. If his argument is sound, it will be accepted by the learned men of the *Ummah* or at least by a large section of them and anything which would be devoid of convincing argument will itself fizzle out and will not be able to gain any ground. This is the principle on the basis of which millions of Muslims in various parts of the world have agreed on a particular juristic school of thought and large blocs of their populations have established their social system on the strength of a particular interpretation of the Qur'anic injunctions and a particular set of the proved *Sunnah*.

2. The second criticism that has been offered about my paper is that there is contradiction in it. A certain critic has sought to point out that on the one hand I have stated that no one has the authority to change the clear and positive injunctions of the Qur'an and *Sunnah*, and on the other I have said that in exceptional conditions and circumstances *Ijtihad* can be utilised to ascertain the situations justifying deviations from these injunctions to suit the exigencies of the time. I have not been able to appreciate the nature of the alleged contradiction. Every law in the world makes provision for exceptions from the general rules in abnormal and extraordinary situations. In the



Qur'an also there are numerous examples of such concessions and from these the jurists have deduced the principles which have to be borne in mind in regulating the limits and occasions, for the concessions, e.g., the dictum 'necessities make certain inhibitions legal'; or that 'difficulties attract concessions'.

3. The third criticism has been extended to all those who have mentioned some conditions for *Ijtihad* in their discourse and as I am also one of them, it is incumbent on me to answer it. I would respectfully submit that the conditions mentioned by me may be studied over again and then the particular condition which is sought to be annulled should be pin-pointed. Is it desired to rule out the condition that those undertaking *Ijtihad* should be sincerely desirous of following the dictates of the *Shari'ah* and not wanted to overstep its limits? Or the condition that they should be conversant with the language of the Qur'an and the *Sunnah*? Or the condition that they should have made such a deep study of the Qur'an and the *Sunnah* as would enable them to fully understand the system of the *Shari'ah*? Or that they should be cognizant of the contributions made by the past *Mujtahidin*? Or the condition that they should be conversant with the problems and affairs of the world? Or again that they should not be persons of bad conduct and devoid of Islamic moral standards? Whichever of these conditions is considered to be unnecessary by the critic should be specified precisely. To say that in the whole Islamic world not more than ten or twelve persons can be found who fulfil these conditions and come up to this standard, is, in my view, expressing a very poor opinion about the Muslims of the whole world. Perhaps even our opponents do not consider us to be so degraded as to think that we Muslims of the whole world cannot produce more than ten or twelve persons possessing such qualifications. Nevertheless, if anyone wishes to dash the door of *Ijtihad* wide open for every Tom, Dick and Harry, qualified or unqualified for the job, he may do so. But I should like to know how he will be able to make the Muslim public swallow the results of *Ijtihad* thus undertaken by men who are devoid of good conduct and

sound learning and whose motives and sincerity is looked upon as doubtful and questionable ? Can the *Ijtihad* performed by such people ever win the support, confidence and loyalty of the people ? And if it cannot, as it is bound to, then of what value would it be for us and the posterity ?

### III

## IJTIHAD, IJMA' AND SHŪRA

### Outline :

*It seems that the people are going to the opposite extremes in dealing with the nature and scope of legislation in Islam. Some say that there is no scope for legislation in Islam. Law has been revealed by God and His Prophet and the Muslims are left only to follow the law in the prescribed form. Some others hold that there is unlimited scope for free legislation in Islam and they say that the rulers are entitled even to change or make amends in the forms of worship (Ibadaat) determined by the Holy Prophet. For instance, they permit them to change the form of the prayer, of the fast and the like.*

*Please let us know what is the real scope of legislation in Islam and what form can legislation take in an Islamic State. Please also let us know what is the legal position of the personal and consultative verdicts of the right-guided Caliphs and of the opinions of the legists of the past. Also throw some light on the concepts of Ijma' and Shūra.*

### Answer :

1. In Islam, there is no scope for legislation in the field of worships. Their forms have been laid and cannot be changed or amended. But in the field of individual and social affairs (*Mu'amalat*) there is a limited scope for legislation in matters about which the Qur'an and *Sunna* are silent.

The basic principle which holds good in Islamic law is that in respect of worships, do what has been prescribed and do not innovate ; while in respect of the general affairs of life, follow that what has been commended, avoid that what has been forbidden, and where the Law-giver has not given any guidance

you are free to act on your own vision and decide accordingly. Sbatibi in his book *Al-I'tisam* states this principle in the following words :

"The rule for worships is a little different from the one for general affairs of life. In general affairs the law is that where the sovereign is silent, the people are free to act on their own vision. This is the field of permissibles. But contrary to this, in respect of matters of worship and prayer no such thing can be adopted which has no basis in the *Shari'ah*. For 'ibadaat are directly related to the clear command and the will of God. The reason for this distinction is that in the general worldly matters we ourselves may, with the help of our own intellect, discover the right path, but intellect cannot guide us in the realm of worship. It cannot tell us how to get nearest to the Lord".<sup>1</sup>

2. In the realm of the general affairs of life (*Mu'amalat*) legislation can be made in four fields, viz :

- (i) Interpretation, i.e., the ascertainment of the intent and the meaning of the *nass* (a Qur'anic verse or established tradition) in respect of matters about which a command in the nature of order or forbiddance is available from the Law-giver.
- (ii) Analogy. It consists in applying to a certain case about which no specific guidance is provided, a command which has been given by the Law-giver for a similar or like case. This is done by discovering the reason or the effective cause (*illah*) of a certain commandment and to apply it to cases where the same effective cause is present.
- (iii) Inference and *Ijtihad*. This is the application of the general principles of the *Shari'ah* to the ordinary, minor and day-to-day problems and an endeavour to formulate, on the basis of suggestions, indications or

1. Sbatibi, *Al-I'tisam*, Vol. II, p. 115 (Matba' Mustafa Muhammad, Cairo).

implications of the injunctions of the *Shari'ah*, an overall view of life as the Law-giver would like it to be.

- (iv) **New Legislation.** To formulate, in respect of those problems about which the Law-giver has provided no guidance, new laws which are in conformity with the ultimate objective of Islam, and are capable of meeting the real needs of the people and thus are expedient and are not repugnant to the spirit, temperament and the overall system of Islam. Muslim legists have called this '*Masaleh Mursalah*' and '*Istihsan*'. By *masaleh mursalah* are meant 'all those expediences which have been left to our own choice and nothing has been proscribed either way'. *Istihsan*, on the other hand is, in a sense, a concept of equity, wherein although a certain commandment is arrived at through analogy (*Qiyas*), but because of greater and wider expediences admissible in Islam, the dictate of expediency is given preference over the apparent inference through analogy.

3. The concepts of interpretation, analogy and inference do not need any further elucidation, but those of *masaleh mursalah* and *istihsan* do need some explanation. Shatibi has discussed these problems in a masterly way.<sup>1</sup> He proves with incontrovertible arguments that legislation under *masaleh mursalah* does not amount to totally independent and unfettered legislation. There are certain conditions which must be fulfilled and they are :

- (a) The legislation so made should be in conformity with the objectives of the *Shari'ah* and not repugnant to them in any way.
- (b) That it should be intelligible and acceptable to the people when presented before them.<sup>2</sup>
- (c) That it should be made to fulfil any real and genuine need, or to remove any genuine difficulty.<sup>3</sup>

1. See Shatibi, *Al-I'tisam*, *op. cit.* \*

2. This means that it should not be contrary to the general notions of reasons as accepted by the Muslim society—*Editor*.

3. Shatibi, *Al-I'tisam*, Vol. II, pp. 110-14.

Shatibi also discusses the principle of *istihsan* in detail. According to him, *istihsan* consists in the rejection of *Qiyas* and the acceptance of the dictate of equity and expediency in a case where an inference from *Qiyas* leads to a situation which involves in the eyes of the jurist, any such tangible inconvenience, discomfort or loss which the *Shari'ah* wants to avoid, is against the express good of the people or is repugnant to an admissible custom. Thus in case of *istihsan*, the apparent dictate of *Qiyas* can be rejected only if there is a genuine case of equity and there are strong arguments to support and establish it.<sup>1</sup>

4. The opinion, *fatawa*, or research of a legist or jurist, however high, in respect of the above discussed four fields, will at best be only an expert opinion or a research conclusion, and will enjoy as much weight and respect as is commensurate with the strength of the argument and the academic position of the legist. But such opinion will not amount to LAW. To give it the status of law it is essential that the legislative council of an Islamic State, consisting, as it must, of the men of authority and learning, should enact that interpretation, *Qiyas*, inference *ijtihad*, *istihsan* or *istislah* into LAW, through its *ijma'* (consensus) or majority decision.<sup>2</sup> I would like to substantiate this point by some examples from the period of *Khilafat-e-Rashidah*.

- (i) The Qur'an has prohibited the drinking of liquor, but no specific punishment has been prescribed for the offence in the Book. The Holy Prophet imparted different punishments to different offenders — each suiting the specific case in which it was awarded. As such, he did not prescribe any specific punishment (*hadd*) for this offence. *Abu Bakr* and *'Umar* gave the punishment of forty stripes to the offender but they too did not make any law to that effect. During the reign of *'Uthman*, when the number of offenders increased, the problem was presented before the *Majlis-i-Shura*. In the meeting of this council, *'Ali*

1. Shatibi, *Al-It'isam*,... pp. 118-19.

2. See also Chapter No. V, *First Principles of an Islamic State*.

made a brief but impressive speech and suggested that eighty stripes be laid as punishment for the crime. They unanimously adopted this suggestion and through this *ijma'* the decision became law.<sup>1</sup>

- (ii) It was enacted during the *Khilafat-e-Rashidah* that a worker or manufacturer was responsible for the commodity he had been given to work upon, and if that commodity was destroyed while it was with him, he would have to make good the loss. For instance, if some cloth has been given to a tailor or a piece of gold to a goldsmith and the commodity is destroyed while in his possession, he will have to make good the loss. This decision too was made on the plea made by 'Ali. He argued that although, on the face of it, the worker or the manufacturer does not seem to be responsible for the loss which is not the result of his own negligence, but if there is no such law of vicarious liability, the workers will normally become negligent towards the properties of others and this would involve a greater national loss. Thus it is expediential to hold him responsible for the goods given to him. This law, too, was made through *ijma'*.<sup>2</sup>
- (iii) 'Umar judicially decided that when in a murder more than one person were involved, *Qisas* should be derived from all the accomplices. Malik and Shafe'i have adopted this position. But the decision of 'Umar has not been regarded as a part of the law, for it was a judicial verdict, and was not enacted into law by an *ijma'* or the majority of the *Shura*.<sup>3</sup>
- (iv) The question arose that: If a person whose whereabouts were not known and whose wife had, with the permission of the court, contracted a second marriage, appears, which of the two husbands will have

1. Shatibi, *Al-I'tisam*, Vol. II, p. 101.

2. *Ibid.*, Vol. II, p. 102.

3. *Ibid.*, II, p. 102.

preferential right upon the wife? *Khulafa-e-Rashidin* gave quite different verdicts in such cases. But none of the decisions enjoys the status of law, for the problem was never presented before the *Shura* and no *ijma'* was ever arrived at on the same.<sup>1</sup>

5. The above discussion clearly shows that the position given to the judicial verdicts in the legal system of Islam is quite different from the one given to them in the English law. In the English law the verdicts of the Judiciary are precedents and amount to law as such. But in Islam the decision of a judge, which involves a certain interpretation of a *nass* is the result of a *Qiyas* or an *Ijtihad*, will definitely be enforced in the case it deals with, but it will not become an integral part of the law as such. Similarly, a judge too is not bound by his own earlier judgments. He can later on give a different decision in a similar case, provided he has changed his views on the subject and has realised that his earlier view was not correct.

6. After the period of the *Khilafat-e-Rashidah*, the institution of *Shura* disintegrated. During the later period different legislators and jurists formulated their *corpus juris*. These codes of *fiqh* began to enjoy semi-legal status for the simple reason that the overwhelming majority of the people of different regions had voluntarily accepted the *fiqh* of a certain *Imam*. For instance, Iraq and Eastern provinces adopted the *fiqh* of *Abu Hanifa*, Spain and North Africa, of *Malik*, Egypt, of *Shafe'i*, etc. But the mere popularity of a certain *fiqh* in a certain region does not impart to it the status of law in the real sense of the word. If a certain *fiqh* has become law, it has become so only if a state has adopted it as its law, and not otherwise.

There has been some differences of opinion as to the exact definition of *ijma'*. According to *Shafe'i*, *ijma'* is "a complete consensus of all the learned on a certain point of law". According to him, there should not be a single opinion against the consensus. *Ibn Jarir*, *Al-Tabari* and *Abu Bakr Al-Razi* regard even a majority decision as *ijma'*. The position of *Ahmad ibn*

1. Shatibi, *Al-I'tsam*, Vol II, p. 126.

*Hanbal* is that when he says "we know of no opposition to this view" that means that he regards that decision as *ijma'*.

All are agreed that *ijma'* is a final authority. This means that when the *ijma'* has been arrived at on a certain interpretation of a *nass* or on a certain *ijtihad*, *Qiyas* or expediential legislation, then such an *ijma'* is binding on all and must be followed. Differences arise only as to the question whether there has been an *ijma'* on a certain legal point or not? No one challenges the authority of *ijma'* as such. The controversy hovers round the point : *whether it has been arrived at or not !*

As far as the period of the *Khilafat-e-Rashidah* is concerned, there is no difficulty in finding out the *ijma'* arrived at in that period. The institution of *Shura* was there and all the decisions made through consensus or majority verdict are enshrined in the traditions. Such decisions can be depended upon as of the unimpeachable authority. But as to the later period, when the institution of *Shura* disintegrated and when there was no proper machinery for the achievement of the consensus, it became very difficult to know whether there had been an *ijma'* on a certain point or not. That is why the *ijma'* of the *Khilafat-e-Rashidah* is indisputably accepted. But when anyone claims that there has been an *ijma'* on a point in any later period, then all the scholars do not accept the claim. In our own opinion *ijma'* can be found out only for the period in which the political system of Islam has been in operation : without this, it is not possible to ascertain decisively the existence of an *ijma'*.

There is a common misconception that *Shafe'i*, *Ahmad ibn Hanbal* and some others do not believe in the existence of *ijma'*. This misconception is the product of a failure to appreciate the above-mentioned position. When a person claimed that there had been an *ijma'* on a certain point and did not produce any proof of such an *ijma'*, these people refused to accept that claim. Thus they did not dispute the authority of *ijma'* as such ; they only disputed the occurrence of *ijma'* on that specific issue.

*Shafe'i* has discussed this point in sufficient detail. In his



book *Jami al-'Ilm* he says that it has now become impossible to ascertain all the opinions of the 'Ulama on minor and detailed problems because the world of Islam has spread far and wide, the 'Ulama have dispersed and the close organisation of the community has shattered. In such conditions it is wrong to claim any *ijma'* on points of detail. But as to the basic principles and the major problems, it can be said that there has been *ijma'* on them, for instance, there has been *ijma'* on the timings of the five prayers, or the conditions of fasting etc. In the words of *Ibn Taimiya*:

"*Ijma'* means, that all the 'Ulama of the *Ummah* have agreed upon a certain point. And when it is established that there has been a consensus of the entire *Ummah* on a certain legal point, then it is not rightful for any person to refuse to accept that. This is so because the entire *Ummah* cannot have consensus on error. But there are many problems about which people think that there is *ijma'* on them, while in fact there is none. Rather in some cases even the opposite view is correct and is upheld".<sup>1</sup>

The above discussion clearly shows that the *ijma'* and the majority decision of the *Ummah* on a certain interpretation of *nass* or on a certain *qiyas*, *ijtihad* or expediential legislation do constitute law and are deemed to be authoritative in *Shari'ah*. If such a law has been enacted by the men of learning and authority in the world of Islam, it is binding on all the Muslims of the world and if it has been enacted by those of any one country or region, then it will hold good for them alone.

1. Taimiya, *Fatawa*, Vol. I, p. 406. Matha' Kurdistan-al-Ilmiyah, Cairo, 1326 A.H.

## Chapter 3

### How to Introduce Islamic Law in Pakistan ?

WHENEVER there is a discussion on Islamic Law, one of the most important questions that is passed is, *How will it be introduced?* And this question is, indeed, a very important one. A changeover to Islamic Law cannot be made overnight. The problem involves many a tricky complication. And it is the duty of the scholars and the administrators to give their best thought to the problem and suggest and adopt practical steps to introduce the Islamic Law in a systematic and scientific way. Maulana Maududi discussed the problems involved in the introduction of Islamic Law in Pakistan in a speech delivered on 19th February, 1948 in the Law College, Lahore, and also gave some practical suggestions for its introduction in Pakistan. The English translation of that speech is presented in the following chapter.

—Editor.

## HOW TO INTRODUCE ISLAMIC LAW IN PAKISTAN ?

**I**N my previous discourse<sup>1</sup> I had dealt with the spirit and the fundamental precepts of Islamic Law and our duties and obligations in this regard. I had also replied to the objections that are generally put forward about the introduction of Islamic Law in modern times and to the criticisms about its efficacy as a legal system. That address of mine was of an introductory nature. Now I propose to discuss this problem at greater length and will explain the course that should, in my view, be adopted for the enforcement of Islamic Law in our country.

I would like, at the very outset, to dispel some of the doubts and misgivings which crowd into the minds of a considerable section of our people as soon as they think of the enforcement of Islamic Law. Many people on hearing of our intention to establish an Islamic State in Pakistan, which would of course, be governed by Islamic Law, begin to think that the very moment Pakistan is declared an Islamic State, all the present laws will be repealed and replaced by corresponding Islamic Laws without a minute's delay and all in one stroke.

This misunderstanding is not confined to the common folk only. It is found among persons of religious understanding as well. They seem to think the day we resolve to mould Pakistan into an Islamic State, it should also be the day of the practical fulfilment of that resolution. Such people overlook the fact that the legal code of a country does not exist in a vacuum. Rather, it is deeply interlinked with the ethical norms and the social, economic and political order of the country. They do not realise that so long as the social set-up of a country does not alter radically, the legal system can undergo but little change. They also forget that vital changes have been wrought in our lives during the period of the British rule and that the entire mode of our living has been de-Islamised. It has been divested of its

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1. The reference is to Chapter I, 'The Islamic Law'.—Editor.

Islamic character and is being governed by principles derived from sources other than Islam. Consequently, what is required of us is to Islamise the entire system of our life. And this, in its turn, is an uphill task and demands an enormous amount of strenuous effort.

Having no idea of the practical problems of modern life, these fervent but ignorant lovers of Islam take the task of revolutionising the collective life of a nation very lightly and superficially. Hence they indulge in day-dreaming and crying for the moon. But such an outlook serves only the interests of those who are trying their best to prevent the establishment of an Islamic State and provides them with grounds to scoff at the very idea of this venture.

## I

### GRADUAL CHANGE

If we really wish to see our Islamic ideals translated into reality, we should not overlook the basic law of nature that all stable and far-reaching changes in the collective life of people come about gradually. The more sudden a change is, the more short-lived it generally turns out to be. For a permanent change it is necessary that it should be free from extremist bias and unbalanced approach.

The best example of this gradual change is the revolution brought about by the Holy Prophet (peace be upon him) in Arabia. One who is acquainted, even superficially, with the history of the Prophet's achievements, knows that he did not enforce the entire body of Islamic Law all at once. Instead of that, the society was prepared gradually for their enforcement. He started his efforts for reform by inculcating belief in the fundamentals of Islam, viz, the unity of God, the Life after Death and the institution of Prophet-hood and by inducing the people to live a life of righteousness and piety. Those who accepted this message were trained by him to believe in and practise the Islamic way of life. When this was achieved to a considerable degree, the Prophet (peace be upon him) went a

step further and established an Islamic State in Madinah with the object of making the entire life of the country conform to the Islamic pattern. After gaining political power and taking the reins of administration in his hands, he (peace be on him) started an all-out campaign for the regeneration and the reconstruction of the collective life of the community of Islamic concepts of life : an end for which he had been heretofore endeavouring by means of preaching and persuasion only. He (peace be on him) introduced a new system of education—a system which, in keeping with the conditions obtaining in his time, consisted mainly of verbal instruction and went on with the execution of a well-chalked-out and a systematic plan for an overall reform in the moral, social, cultural and economic life of the corrupt society of his day. These efforts progressively brought about a radical change in the mental outlook and the practical conduct of the people. In commensuration with the progress made in this field the Prophet (peace be on him) uprooted the practices of the "Age of Ignorance" one by one and substituted for them new, moderate and humane principles of human conduct. Along with these reforms, the Prophet proceeded with the gradual enforcement of the legal code of Islam, and the result was that within a period of nine years, the life of the country was Islamised in all its aspects—social, political, economic and legal.

A careful study of the Qur'an and the *Hadith* reveals the gradual and marvellously effective course adopted by the Prophet. We find that the Islamic Law of Inheritance was enforced in the third year after the migration (*hijrah*). The gradual enforcement of the rules and regulations regarding marriage and divorce was completed in the year 7 A.H. The enforcement of criminal code was spread over a period of many years and got its final touches in 8 A.H. An atmosphere congenial for the prohibition of wine was created gradually and its absolute prohibition was effected in the 8th A.H. Similarly, though the evils of interest were stressed early in Meccan life (i.e., before the Holy Prophet migrated to Madinah), yet it was not practi-

cally prohibited until 9 A.H. when the whole economic structure of the Muslim society had undergone a complete transformation and the new social order had been firmly established.

All this can be very well compared to the labour of an architect who, while erecting a building, proceeds gradually with his plan. He begins with gathering an adequate number of masons and other labourers and procuring the required material ; he then levels the ground, lays the foundation and raises the walls brick by brick. The roof is laid when the walls are ready and thus after continuous and extensive hard labour, he completes the construction of the building.

The British rule over this sub-continent is another such instance from our recent past. As we all know very well, the Britishers did not commit the mistake of changing the entire setup of Indian life including its legal structure all at once. The Islamic *Shari'ah* was the law of the land before their arrival, and it was no easy job to wipe out the current traditions of living and to bring about a thorough Westernization of the entire life. Consequently, for a considerable period of time after the establishment of the British rule, the Islamic *Shari'ah* remained in vogue in the country. The courts had the *Qadis* to decide the cases in accordance with the Islamic *Shari'ah* which was not confined only to the personal affairs of the Muslims but constituted the law of the land. The Britishers tolerated all that and took about a hundred years to replace the *Shari'ah* by their own code of law.

All this was done very gradually and systematically. First of all the Britishers trained the people who could serve their purpose by effecting a change in the educational system of the country. Skillfully they propagated their ideas, reinforced their propaganda with official power and thus revolutionised the mental attitude of the people. They also changed the economic order prevailing in the sub-continent. All this resulted in a gradual change in the collective life of the country followed by a gradual replacement of old laws by new ones.

Coming to our own times and our own country, Pakistan, if we wish to promulgate Islamic Law here it would mean nothing short of demolishing the entire structure erected by our British masters and the erection of a new one in its place. It is obvious that this cannot be achieved by just an official proclamation or a parliamentary bill, because it is a stupendous task and demands a good deal of hard and systematic work according to a well thought-out and all-embracing programme. For instance, we need a thorough reorientation of our educational system. At present we find two kinds of educational institutions running simultaneously in our country, viz., the old religious '*madrasas*' and the modern secular schools, colleges and universities. None of them can produce people needed to run a modern Islamic State. The old-fashioned schools are steeped in conservatism to such an extent that they have lost all touch with the modern world. Their education has lost all contact with the practical problems of life and has thus become barren and lifeless. It cannot, therefore, produce people who might be able to serve, for instance, as judges and magistrates of a progressive modern state. As for our modern secular institutions, they produce people who are heretofore of even a rudimentary knowledge of Islam and its laws. Moreover, we can hardly find such persons among them whose mentality has not been affected by the poisonous content and the thoroughly materialistic bias of modern secular education.

There is yet another difficulty. The Islamic Law has not been in force for the last one century or so. Consequently, our Legal Code has become stagnant and lags behind the time, while our urgent need is to bring it in level with the latest developments of the modern age. Obviously, this would require a considerable amount of hard work.

There is, however, an even bigger hurdle. Living under the domination of an alien power and deprived of the Islamic influences for a long time, the pattern of our moral, cultural, social, economic and political life has undergone a radical change and is at present far removed from the Islamic ideals. Under

such circumstances it cannot be fruitful, even if it were possible, to change the legal structure of the country all at once because then the general pattern of life and the legal structure will be poles apart, and the legal change will have to suffer the fate of a sapling planted in an uncongenial soil, facing a hostile environment. It is, therefore, inevitable that the required reform should be gradual and the changes in the laws should be effected in such a manner as to balance favourably the change in the moral, educational, social, cultural and political life of the nation.

But making a pretext of this reasonable consideration for gradation in change, some people plead for the establishment of a secular state for the time being. They argue that when an Islamic atmosphere is created, an Islamic state will automatically come into existence and the enforcement of Islamic laws will follow in its natural course. Such statements are absolutely fallacious and misleading. The question is: who will build up the required Islamic atmosphere? Can an irreligious state, with Westernized people at its helm, do this job? Will the persons well-versed only in running bars and night clubs and movie houses spend their energies in constructing and maintaining mosques? If the answer is in the affirmative, it will indeed be a unique experiment of its kind in human history: ungodliness fostering godliness so that it might ultimately be supplanted by the latter!

If they have any other interpretation, they may kindly elucidate as to who will create the "Islamic atmosphere" and what will be the resources at his command? And, during this interim period, what will be the purpose of the secular state? What end will its organs serve?

If we reflect for a moment and consider the examples quoted above to support that principle of gradual change in the transformation of collective life, whether Islamic or non-Islamic, can be brought into existence only when the goal is unmistakably clear and a definite plan is chalked out for the achievement of that goal.

The Islamic revolution brought about by the Holy Prophet



(peace be on him) was the outcome of years of toil—years spent in producing men suitable for the cause and in changing the outlook of the people by propagating the teachings of Islam. And above all, the entire administrative machinery of the small city state of Madinah was utilized for the regeneration of the society and the creation of a new civilization. Thus was the ground prepared for the enforcement of the Islamic laws.

The Britishers could succeed in bringing about their cherished changes in India only because the reins of government were in their hands and because they knew the proper method of transforming the collective life of a people. They had a definite goal and a clear plan. They worked incessantly for it and at last succeeded in establishing a legal system which was in conformity with their ideology and culture. But still some people are under the delusion that a building can be erected without architects or by those who are neither competent nor willing to do the job !

## II

### THE CORRECT PROCEDURE

No reasonable person can deny that Pakistan was demanded and established in the name of Islam and for the sake of the revival of its glory. It is thus potentially an Islamic ideological state. And this being so, it must be recognized as an incontrovertible fact that it is the state which should play a positive role in the establishment of the Islamic system of life. When the state is our own and we have placed at its disposal all the resources of our country, there is no reason why we should go elsewhere to fetch the architects of the Islamic order.

**First Step**—If what has been stated above is correct, then the first step towards our destination would be to Muslimise (convert to Islam) the state which is still based on and working according to the same secular bases on which it did during the British period. The practical shape for the achievement of this end would be that our Constituent Assembly should unequivocally declare :

- (i) That the sovereignty in Pakistan belongs to God Almighty alone and that the Government of Pakistan shall administer the country as His agent.
- (ii) That the basic law of the land is the Islamic *Shari'ah* which has come to us through our Prophet Muhammad (peace be on him).
- (iii) That all those existing laws which may be in conflict with the *Shari'ah* shall in due course be repealed or brought into conformity with the basic law and no law which may be in any way repugnant to *Shari'ah* shall be enacted in future.
- (iv) That the State, in exercising its powers, shall not be competent to transgress the limits laid down by Islam.

This declaration will have a far-reaching effect on every department of our national life. For instance, after such a declaration, our voters will become aware of the purpose for which they have to elect their representatives. However deficient the general mass of our voters may be in respect of formal education, they certainly possess the sense to decide as to what type of people can be relied upon for a certain purpose. We have never seen them committing the folly of seeking the services of a medical practitioner to plead a legal case for them or to approach a lawyer for medical treatment! They do know, if not fully at least to a considerable extent, as to who among their fellow-countrymen, are God-fearing and virtuous and who are completely given to worldliness, self-interest and vice. People choose persons according to the ends in view. Up till now they never had in view the object of electing representatives for running an Islamic system of government. Therefore, they had no need of finding out the people suitable for this purpose. The country had a system of government devoid of religious ideals and moral values and it required a particular type of people to administer it. People, therefore, had the same type of men in view and voted them to power. Now, if we frame an Islamic constitution and the people are confronted with the question of electing those who are capable of efficiently running the Islamic

system of government, they will naturally keep Islamic standards before themselves. Their selection may not be an ideal one, but this much is certain that they will not select the wicked or the corrupt type or the blind imitators of the West. They are bound to select those persons who are both mentally and morally equipped for the task.

**Second Step**—Our next step towards the establishment of the Islamic way of life should be the transference of the reins of power to the people who are capable of using it effectively for the realization of the above-mentioned objective. This will of course be achieved through the well-known democratic procedure of general elections.

**Third Step**—The third step will be to chalk out a comprehensive plan for a thorough reform of all the departments of our national life for which all the resources of the state will have to be utilized. Thus the educational system will be reorientated in all the means of propaganda—the press, the platform, the cinema and the radio—will be used for the purpose of creating a new Islamic consciousness, a new healthy outlook; and an incessant and systematic effort will have to be made to mould the society and its culture into Islamic patterns.

Persons who have been incorrigibly affected by the decadent, sinful and corrupt system of life can be compared to a fibre of discordant colour which will not fit into our pattern. They are the lost men and are of no use from our point of view. Such people will have to be replaced everywhere by those who can prove helpful in the task ahead.

The economic system will also have to be basically altered and its whole structure which is built on the Hinduistic and Western semi-feudalistic and semi-capitalistic foundations, will have to be demolished.

I am sure that if a righteous group of people, possessing vision and statesmanship, wields political power and, making full use of the administrative machinery of the government, utilizes all the resources at its disposal for the execution of a well-conceived plan of national regeneration, the collective life

of this country can be totally changed within a period of ten years. And as this change comes about gradually, the British made laws can be amended or repealed and replaced by the Islamic laws. This process will continue as such for some time and ultimately all un-Islamic laws will be repealed and our state will be governed by Islamic laws alone.

### III

## CONSTRUCTIVE WORK FOR THE ENFORCEMENT OF ISLAMIC LAW

At this stage it seems necessary to throw some light on the constructive work that has to be done in order to change the existing legal system of the country and to replace it by an Islamic one. The vast programme of reform to which I have referred above demands an enormous amount of hard work in almost every walk of life. After centuries of stagnation and inertia, degeneration and mental parasitism and servitude, we find that every aspect of our national and cultural life has been reduced to a mess. Here I will confine myself only to the ways and means necessary for effecting reform in the legal system and will not deal with the measures that should be adopted for the reform of other aspects of our national life.

#### I. Academy of Law

The first thing that should be done towards this direction is the establishment of an Academy of Law which should take stock of the entire legal literature bequeathed by our ancestors. This academy should not only translate into our national language all those books which are necessary for acquiring an understanding of Islamic Jurisprudence and Law but also edit and annotate them afresh according to modern methods of editing so that they may become accessible to the modern educated people and useful for our [present-day needs. As we all know, a very great part of the literature on Islamic Jurisprudence is still in Arabic and the modern educated of

our people are generally not conversant with this language. The result is that owing to inability of their approach to the real sources and the inimical propaganda of our opponents, they have come to harbour many a misunderstandings about Islamic Law. These misunderstandings have in some cases assumed such proportions that some people have started even saying in so many words that the entire mass of age-old controversies, legal hair-splittings and long-drawn arguments should be thrown into the waste-paper basket and that we should start work on Islamic Law all afresh. But the fact of the matter is that the people who express such funny ideas betray not only their lack of knowledge but also their lack of vision and imagination. If such people earnestly and dispassionately study the achievements of their ancestors in the field of jurisprudence, they will shudder at their ignorance. They will come to know that during the last thirteen centuries, their forefathers had not been engaged in fruitless controversies : on the contrary, they have left a very vast and priceless treasure of knowledge and research for the posterity. They have built for us quite a considerable portion of the edifice ; —and what a folly it would be if, out of sheer ignorance, we insist on demolishing what has already been built and start constructing all anew. Even common-sense demands that we should make the best use of what we have inherited from our forefathers and spend our energies only on further expansion according to our present needs. Otherwise, if every generation of ours were to reduce the labours of its predecessors to naught and start anew, we would never be able to make any progress worth the name.

I have already mentioned in my previous discourse<sup>1</sup> that during the past centuries the various Muslim states which flourished over a large part of the then civilized world, had Islamic *Fiqh* as their 'law of the land'. Muslims of those days were not "barbarians". Rather, they had a highly advanced

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1. See Chapter 1, *The Islamic Law—Editor*.

culture and their scholars of religions law had applied Islamic principles to all the problems of their civilization. It were these experts of Islamic *Fiqh* who held important positions as magistrates, judges and chief justices and their judgements and decrees have produced a large volume of legal precedents. Indeed, these experts have made prodigious contribution to every branch of law. Their works evoke one's highest admiration not only when they discuss problems of Civil and Criminal Law but also when they deal with the problems of Constitutional and International Law. A perusal of their writings and judgements gives us an idea of their deep insight in, and their intelligent and masterly grasp of all these problems. What is really needed now is that a body of scholars should be deputed to take a detailed stock of all the writings left by our ancestors and to re-edit them in the form of modern books of Law.

There are some books which must necessarily be translated into the national language :

(1) The following three books on *Ahkam al-Qur'an* (the Legal Injunctions of the Qur'an) :

(i) *Al-Jassas*,

(ii) *Ibn al-'Arabi* and

(iii) *Qurtubi*.

Their study will train our students to deduce injunctions and laws from the Qur'an. These books present a commentary on and an explanation of all the Quranic verses relating to legal commandments and also contain all the relevant details from *ahadith* (Prophetic Traditions) and the sayings and practices of the Companions of the Holy Prophet (peace be on him). Besides these, they give us the various deductions made by the great jurists of the past along with their arguments in favour of those deductions.

(2) Next to these three books on Quranic injunctions comes the great treasure of the commentaries on the books of *Hadith*. In these books, apart from commandments and laws, we find the best material on legal precedents and their explanations. From this treasure the following books should particularly be

translated :

- (i) On *al-Bukhari* : *'Aini and Fath al-Bari*.
- (ii) On *Muslim* : *Nawawi and Fath al-Mulhim*.
- (iii) On *Abu Da'ud* : *'Aunul-Ma'bud and Badhl al-Majhud*.
- (iv) On *Muwatta* : *Sbah Wali-nlidd's Musawwa and Musaffa*,  
and *Aujaz al-Masalik* by a contemporary Indian scholar.
- (v) On *Muntaqa al-Akhhbar* : *Shankani's Nail al-A'war*.
- (vi) On *Mishkat* : *At'aliq-us-Sabeeh*.
- (vii) On *'Ilm-al-Athar* ; *Ma'ani al-Athar* by Imam Tahawi.

(3) After this we should turn to the fundamental books of *Fiqh* from which the following must particularly be translated :

- (i) On *Hanafi Fiqh* :  
*Al-Mabsut and Sharh al-Siyar al-Kabir* by Imam  
Sarakhsei  
*Bada'i' al-Shana'i'* by Keshani ;  
*Ibn Humam's Fath al-Qadir* ;  
*Hidayah* and  
*Fatawa-i-Alamgiri*.
- (ii) On *Shafe'i Fiqh* :  
*Kitab al-Umm* ;  
*Sharh al-Muhaddhab* and  
*Mughni al-Muhtaj*.
- (iii) On *Māliki Fiqh* :  
*Al-Mudawwanah* and any other important book that  
might be selected by scholars.
- (iv) On *Hanbali Fiqh* :  
*Al-Mughni* by Ibn Qudamah ;
- (v) On *Zāhiri Fiqh* :  
*Al-Muhalla* by Ibn Hazm ;
- (vi) On *Madhahib-e-Arba'ah* (the Four Schools of Thought) ;  
*Bidayat al-Mujtahid* by Ibn Rushd and *Al-Fiqh fil-*  
*Madhahib al-Arba'ah* compiled by Egyptian scholars.
- (vii) On certain special problems :  
*Kitab al-Kharaj* by Imam Abu Yusuf ;  
*Al-Kharaj* by Yahya Ibn Adam ;  
*Kitab al-Amwal* by Abu 'Ubaid al-Qasim ;

*Ahkām al-Wakf* by Hilal Ibn Yahya and,  
*Ahkām al-Muwarith* by Dimiyati.

(4) We must also translate some important books on Jurisprudence and on the philosophy of law, so that our legal experts may acquire a deep insight into and gain a correct understanding of the spirit of Islamic *Fiqh*. In my opinion the following books should be selected for this purpose :

- (i) *Usul al-Ahkām* by Ibn Hazm.
- (ii) *Al-Ihkām li-Usul al-Ahkām* by Amidi.
- (iii) *Usul al-Fiqh* by Khadari.
- (iv) *Al-Muwafaqat* by Imam Shatibi.
- (v) *Ilām al-Muwaqqi'in* by Ibn al-Qayyim.
- (vi) *Hujjat Allah al-Balighah* by Shah Waliullah.

As I have already said, our need is not only to translate these books, but also to arrange their contents on the pattern of modern books of Law. New headings will have to be set, scattered discussions on legal problems will have to be gathered and collected under relevant headings, and indices will have to be prepared. Unless we take pains to effect these improvements these books will not become fully useful for our present-day needs. The method of compiling a book in olden days was quite different from that of the present age. Moreover, in those days such detailed classification of Law as exists today had not yet come into existence. For instance, our jurists had no separate branch of Constitutional Law or International Law. No doubt, they dealt with these problems but under headings like *Jihad* (Laws of War and Peace), *Kharaj* (Revenue and Finance), Marriage and Inheritance. Likewise, they had no separate branch of Criminal Law. They dealt with such problems under the headings of *Hudud* (Punishments), *Jinayat* (Crimes) and *Diyat* (fine-money or blood-money). They were used to discuss a subject at different places, therefore material on a certain subject often scattered under so many headings. They also did not discuss Economics and Finance as separate subjects. They severally dealt with these subjects under headings like : 'the book of sales', 'the book of land-cultivation' etc.



In the same way, they did not use modern terms like Law of Evidence, Civil Procedure Code, Penal Code, Criminal Procedure Code etc. Questions relating to these aspects of law were discussed by them under headings like 'the etiquette for the judges', 'the hook of claims', 'the hook of agreements', and so on. Now, if these books are merely translated they cannot be of much use to us. It is, therefore, imperative that persons having knowledge of modern legal systems should work on all such materials and rearrange them to fulfil the modern requirements. If this is considered to be a very laborious and lengthy task, we should at least prepare complete and exhaustive indices of all these works and should also compile detailed bibliographies for the guidance of a student of law. These should cover all the branches of modern Law so that one may not experience any difficulty in finding out material on a required topic.

## II. The Codification of Law

The next important step in this connection is to appoint a body of Islamic scholars and experts of modern legal thought who should be entrusted with the task of codification of the Islamic Law section and clause-wise according to the modern patterns. In my discourse on the Islamic Law<sup>1</sup> I have already explained at length that, from academic and Islamic points of view, it is not hindering to accept any and every saying or expression of opinion by an authority on *Fiqh*, or anything and everything written in a book of *Fiqh*. This is so because everything contained in a book of *Fiqh* does not constitute Islamic Law. It is only the following four things that constitute Islamic Law :—

- (i) An explicit commandment of God laid down in the Qur'an ; or
- (ii) An explanation or elucidation of a Quranic commandment or an explicit order or prohibition from the Holy Prophet (peace be on him) ; or
- (iii) An interpretation, inference, *Qiyas* (analogy), *ijtihad*, or

1. See Chapter I—Editor.

*istihsan* (juristic preference) on which there has been a consensus (*ijma'*) of the *ummah*; or it may be a majority decision of the *'ulama* which has been accepted by an overwhelming majority of our own people; or

- (iv) An *ijma'* or a majority decision of the nature discussed in (iii) above arrived at by our own men of learning and authority.

My proposal is that a body of experts of Islamic laws should compile the first three categories of laws and commandments into a Code. Additions to it will continue to be made as fresh laws are framed by general consent or majority decision. If and when such an exhaustive code has been compiled, it will be the basic book of Law and all the current books of *Fiqh* will serve as commentaries for this book. Thus the enforcement of Islamic Law by our courts and its teaching in our Law Colleges will be greatly facilitated.

### III. Reform of Legal Education

The third important measure will be to change the prevailing system of legal education. It is imperative that both the courses of study and the methods of teaching should be radically changed and overhauled so that our law colleges may prepare the students academically as well as morally for the enforcement of Islamic Law in the country.

The type of education which is being imparted in our law colleges at present is worthless from our point of view. Students who receive this education not only fail to develop any insight in the Islamic Law, but their mentality and mode of thought also become anything but Islamic. Moreover, the atmosphere of these colleges is such that the students are deprived of the opportunity of imbibing those moral qualities which are needed to run an Islamic state. Consequently unless we change this state of affairs and radically reorient the curricula and the methods of teaching to suit our need of producing legal experts of a high mental and moral calibre who are well-versed in Islamic as well as modern legal thought, we cannot have good

lawyers, magistrates and judges for the courts of an Islamic state.

For this purpose I would like to make certain suggestions for the consideration of the scholars and the educationists :

(1) The first and basic reform is to decide that the knowledge of Arabic shall be a pre-requisite for admission to a law college. This knowledge of Arabic should be such as to enable the students to study the *Qur'an*, the *Hadith* and the *Fiqh*. Though we desire to make our own language the medium of instruction in Law as much as in other subjects and want all the relevant books to be translated, nevertheless the necessity of a fair knowledge of the Arabic language is immense. An insight into Islamic Law cannot be gained unless one knows the language of the *Qur'an*, and that of the Prophet (peace be on him). In the initial stages we shall no doubt experience difficulties in obtaining Arabic knowing students for law colleges. We might even have to start Arabic classes in law colleges themselves for the first few years and might also have to increase the period of education by one year but later on, when Arabic becomes compulsory in our educational system, Arabic knowing students for our law colleges will be easily available.

(2) Along with the teaching of Arabic, the students must also be made to study the *Qur'an* and the *Hadith* before beginning their education in Law so that they become capable of understanding the spirit and the broad outlines of the system of life envisaged by Islam. Our theological institutions have been following since long the wrong method of beginning their education with *Fiqh*. In these institutions, the followers of the various schools of thought teach *Hadith* according to the view point of their particular school. One or two longer chapters of the *Qur'an* are included in the curriculum just as a sacred relic and even the study of these chapters, only the literary beauties of the *Qur'an* are stressed. The result is that although graduates from these institutions are well aware of many particulars and details of the Islamic law, they are not fully conversant with the real spirit, the ideals and the overall

system of Islam, which these laws seek to safeguard. Sometimes they do not even know the relation between *Din* and *Shari'ah*, on the one hand and between the *Shari'ah* and the problems of *Fiqh*, on the other.<sup>1</sup> The result of this type of education is that most of these people believe as if the minute details of law and the doctrine stressed by or peculiar to their own school of thought alone is the real essence of religion. And it is this error that has created sectarian controversies and bigotry among the Muslims. Again, as a result of this some of the basic objectives of the *Shari'ah* have sometimes been overlooked in applying the rules of *Fiqh* to the problems of everyday life. We wish this situation to come to an end. A student must acquire an understanding of Islam as a system through a study of the Qur'an and the *Hadith* before he begins the study of *Fiqh*.

We will, no doubt, be confronted with difficulties for the first few years because we will not get graduates with good knowledge of the Qur'an and *Hadith* and hence we might have to start classes of the Qur'an and *Hadith* as well in the law colleges. But gradually, as our general educational reforms will bear fruit, we will be able to lay down the condition that only those students who had *Tafsir* (Interpretation of the Qur'an) and *Hadith* in degree classes as their optional subjects will be eligible for admission to law colleges or else they will have to spend an extra year to study these subjects.

(3) The curricula of law colleges must necessarily include the following three subjects :

- (a) Principles of Islamic Jurisprudence ;
- (b) History of Islamic Jurisprudence ; and
- (c) *Fiqh*, i.e., an unprejudiced study of all the major schools of *Fiqh*.

Without mastering these three subjects, the students can neither gain a complete understanding of *Fiqh* nor can they develop those qualities of sound reasoning which are a pre-

1. For a discussion of the difference between *Din* and *Shari'ah* see Abul A'la Maududi, *Towards Understanding Islam*, Translated and ed. Khurshid Ahmad, Islamic Publications Ltd., 1969, pp. 152-55.

requisite for becoming good lawyers and jurists. They cannot also become experts in law, capable of framing new rules and regulations for our progressive state and capable of employing the correct modes of interpretation and analogous reasoning. Without that they cannot pronounce judgments of the standard, clarity, vision, and depth evinced by the legists of the past. And if the judgments of our modern legists lack in these respects, they will never be able to command respect and wholesome approval of the people. Not only that, without fully understanding the principles of their own law, they cannot apply them to the new problems which will be cropping up every day and will be creating altogether new situations. It is only the history of *Fiqh* which reveals the evolution of Islamic Law and also points out the lines along which this law can develop in future. Consequently, unless the students of law are fully conversant with all the important contributions of the scholars of the past, they cannot benefit from other schools of *Fiqh* in cases where they are unable to solve a certain problem with the help of the approach and literature of some particular school. This is essential also because they should as a rule make use of this guidance and get assistance from the works of the past before making an independent effort and pronouncing a final judgment. It is for these reasons that I consider the inclusion of the above-mentioned three subjects essential in the list of compulsory subjects in the curricula of our law colleges.

(4) Along with reforming the curricula of legal education we will also have to give due importance to the moral training and character-building of the students. From the Islamic point of view, the law colleges should not serve as factories for producing unconscientious lawyers, unscrupulous magistrates and unjust judges; on the contrary, they should produce lawyers and jurists of high moral stature, of unimpeachable integrity and strength of character. They should be the living emblems of honesty, fairness and justice.

Of all professions, the dispensation of justice requires the highest degree of piety, the acute sense of responsibility and

the greatest measure of the fear of God. Graduates from our law colleges must, therefore, be persons fit to take the place of such luminaries of our history like Qadi Shurayb, Imam Abn Hanifah, Imam Malik, Imam Ahmad Ibn Hanbal, Imam Shafe'i and Qadi Ahn Ynsuf. These colleges must produce persons of strong and dependable character who, while deciding a case in the light of the *Shari'ah*, have their eyes fixed on God and are not at all swayed by greed, fear, personal interest or individual likes and dislikes, and who may not deviate from what they believe and know to be right out of any consideration whatsoever.

#### IV. Reform of Judicial System

In order to prepare the ground for the enforcement of Islamic law, we will have to introduce many reforms in our judicial system also. Leaving aside other less important factors, I will mention only two of them which are most important from the Islamic point of view.

(1) The first problem which deserves attention is the legal profession which is one of the worst and probably the greatest bane of the present judicial system. From the moral point of view not a single argument can be put forward in its favour and, in the practical field, there is not a single genuine requirement of court procedure for which a better alternative cannot be provided for. This profession stands in such contrast with the principles of Islam that as long as it exists, it would be extremely difficult to enforce the Islamic law in its real spirit. Moreover, if the same jugglery is practised with the Law of God as is being practised day in and day out with the man-made law, that may not only deprive us of justice but may also rob us of our faith. It is, therefore, imperative that this profession in its present form is gradually abolished.

Theoretically speaking, the task of the lawyer is to help the court in understanding the law and applying it to the case under trial. In principle, such a need cannot be denied. It can also be accepted that two experts of law may hold different opinions

regarding the same case. It is also possible that in the opinion of one of the experts the case of a certain party may be stronger than that of the other and *vice versa*. Thus, in order to arrive at a sound judgment, it may be useful for the court to know and hear the arguments put forward on behalf of both the parties. But the question is : Are these ends achieved in actual practice and does this profession really meet this just requirement ?

Actually, the situation is very different. A person possessing legal knowledge and insight sells his services in the market. Such a person is always ready to think out and produce legal points in favour of the highest bidder, irrespective of the merits of the case. Thus a lawyer is not at all concerned whether his client is in the wrong, whether he has committed a crime or is innocent, whether he wishes to get what is rightfully due to him or wants to encroach upon the rights of others. Again, a lawyer has also no concern with the spirit and the real object of the law itself and whether, in that sense, the case of his client is just or unjust. What concerns him is that a certain person has paid him his fees for pleading the case on his behalf. Consequently, he prepares the case and gives it a legal shape. He hides its weaker points, plays up the favourable ones and picks out from the facts of the case and from the evidence only such points as strengthen the side taken by him. He also tries to influence and confuse the witnesses so that the actual facts of the case—if they go against his client—remain in the dark or at least become doubtful. It is the supposed duty of a lawyer to put forward only such interpretations of the laws as serve his client's purpose and to strengthen it by referring to legal precedents. Thus, he tries, in a way, to mislead the judge and circumvent the process of justice. All this is done only to extract from the judge a judgment which is in favour of his client, and not the one which is desirable from the point of view of justice.

A lawyer does not worry at all whether a criminal is being acquitted or an innocent person is being convicted, whether a person loses his right or usurps someone else's. It is not his business to support truth and uphold a just cause. He is not

there to have justice done ; his sole aim is money ! For him, anyone prepared to pay the highest amount is always in the right. Can a legal profession of such a nature be declared right and just if we have even the least regard for Islam ? Can any man with moral values, a healthy conscience and the fear of God, take such an awful responsibility upon himself as to have a wronged man deprived of justice and to see that the wrongdoer continues to enjoy the fruit of his wickedness ? And can the advice of such legal experts who are paid to present a one-sided picture be of any help to the court in deciding a case *justly* ? Who can believe that the difference of opinion in the interpretation of the lawyers "hired" by opposing parties, can reasonably be honest and genuine ? Surely, both of them would have put forward just the contrary arguments with the same vehemence, had their clients been exchanged between them.

It is, therefore, apparent that incalculable disservice has been done to the cause of law and justice by making law a profession. It has given premium to the violation rather than the observance of law. It has corroded the entire collective life and has made our politics extremely dirty. In fact it is during the lawyer's educational life itself that the seeds of an immoral attitude are sown. College debates make them habituated to speak against their convictions. The real qualification of a good debator is considered to be his capacity to speak with the same vigour and eloquence both for and against a proposition, regardless of his personal views. The edge of his proficiency in speaking and arguing against truth is further sharpened during the course of his practice in law and he becomes perfect in using his mind and his tongue against the dictates of his conscience. Then, this malady does not stop here. When these people, with this moth-eaten character, enter the arena of public life and politics, they poison the academic, cultural and political life of the whole nation.

Islam is in no way prepared to tolerate such an ugly state of affairs, and there is no place within its legal and judicial structure for this profession, as it is prevalent now-a-days ; for in its



present form it is quite contrary to the spirit and traditions of Islam. Muslims have ruled almost half the then-known world during the last ten or twelve centuries but one cannot find even a trace of the legal profession in their judicial system. On the contrary, the *muftis* of the past had always had independent means of livelihood and used to render the service of issuing *edicts* and helping the courts in the elucidation of points of law, *gratis*. In view of the increased need of our time, we can permanently engage the required number of legal experts including specialists in different branches of Law in cities, towns and villages; and give them reasonable salaries from the government exchequer. But every effort should be made to keep them immune from any obligation to any of the contending parties. The approach to them by any of the parties to a case should be prohibited and none of them should be allowed to render any "service" to them in any form, thus keeping them all the time completely immune from every type of pressure or allurements. Even the government should not have the right of putting any pressure on them, just as it is not entitled to influence the opinion of the judges. The courts can refer cases to them and solicit their opinion. If there is any difference of opinion, they can be asked to appear in courts and argue their respective viewpoints. During the proceedings of a case, besides the cross-examination of the witnesses by the court, these legal experts should also be entitled to extract facts from them which throw any light on the case. This will really help the courts in the correct interpretation and application of law. Honest differences of opinion among legal experts will still be there. But this will help in solving many a knotty legal problem: this will also save much of the time that is wasted due to the cleverly made-up cases and false evidence. And, above all, this will go a long way in effectively checking litigation which is so rampant in our society, mostly due to this legal profession.

There is, however, one important gap that we shall have to fill up in the absence of the lawyers. This concerns the preparation of the cases for presentation to the courts. This is a genuine

necessity of litigant public and without a proper machinery for this purpose they will not only themselves experience much inconvenience but also waste much of the valuable time of our courts and confuse them by putting up their cases in an irregular and incomplete form. A solution of this problem is that we may revive the old institution of "*Mukhtari*" which existed in the past and still continues in a deteriorated form in some parts of our country. Our law colleges should hold subsidiary classes to teach the procedural law to the people of average education and make them conversant with the practical aspects of the judicial business. The duty of such persons would be to give a legal shape to a case so that it may be properly presented in a court of law. They would also instruct the parties regarding judicial procedure at the various stages of a case. These people may be allowed to charge fees for their services. This will not lead to the evils that we find in the present-day legal profession.

(2) In order to make the country's judicial system conform to the Islamic standards, another important reform is needed, and that is the abolition of the court-fee. This is a pernicious innovation and we Muslims were not even acquainted with it before the domination of the Western political thought and values over us. It is foreign to the very spirit of Islam that our courts of law, instead of rendering the service of dispensing justice, should be turned into 'shops of law' whose doors are closed for the persons who are not in a position to pay the price of their services. This state of affairs is reminiscent of the British regime and now that foreign rule has come to an end, we feel that this evil should also go. We want to see our courts functioning on Islamic concepts, according to which dispensing of justice is not a 'business' but a religious duty of every Muslim and of their state most of all—a duty for which no fees should be charged.

One might say that if the court-fee is abolished, how will the expenses incurred on the judiciary be met? I wish to mention the following two points in this regard:

*Firstly*, under an Islamic dispensation the present heavy

judicial establishment, rendered indispensable by the current state of affairs, will no longer be necessary. Abolition of the lawyer's profession will also play its part in reducing litigation. Moreover, the duration of the cases will be considerably reduced. Social, economic and moral reforms will go a long way in curtailing the number of cases. Adequate training of police and jail officials and reforms in these departments will also indirectly contribute to reducing the number of crimes. Thus we will not be in need of as many judges and magistrates and as heavy a judicial establishment as we need at present, consequently, there will be quite a remarkable decrease in the expenditure of our judicial department. Besides that, in an Islamic state the scales of pay also will not be the same as they are today.

After all these reforms and other curtailments of expenditure and the burden of expenditure of the judiciary on our national exchequer will become much lighter and, instead of imposing it on those who need and seek justice, we can distribute it over those persons who go to the courts to serve their unjust ends or those who are greatly benefited by them. For instance, we can fine such persons who try to evade summons or file fictitious suits. The fine imposed upon criminals can also be used for the same purposes. Besides this, a person who gets a decree from a court worth more than a certain amount of money may be taxed according to a certain fixed rate. If, in spite of all this, the judicial department has a deficit balance of expenditure, the deficit can be met from the national exchequer, because to dispense justice among the people is, as has been said earlier, one of the basic obligations of an Islamic state. If the exchequer bears the burden of police, education and health services, why should it not finance the administration of justice?

The above are a few suggestions which, I think, must be put into practice in order to make the enforcement of Islamic law possible in this country. I request the scholars and those who have practical experience in legal and judicial matters to thrash out these suggestions and try to supplement them wherever need be. In the meantime I hope that this explanation of mine will,

to some extent, satisfy those who entertain the wrong notion that the enforcement of Islamic law is not possible at present, and will make them understand that this work can be done. It will also enable them to have an idea of the ways and means of doing this important task. But the enforcement of the Islamic law requires primarily an urge—an irrepressible urge—to do the job. What we need is a group of people—a leadership,—which is imbued with the spirit of Islam and which is determined to establish Islam, come what may. We all know that if a building has to be constructed, the objective cannot be achieved if the architects who know the design of the building and have the will to construct it and possess the *requisite resources*, are not available. On the other hand, if they are available, anything can be built—be it a temple or a mosque.

## **Part II**

# **POLITICAL AND CONSTITUTIONAL THOUGHT OF ISLAM**

## Chapter 4

### Political Theory of Islam

WHAT is Islam and how does it approach the political problem? What is its political philosophy? What are the Quranic foundations of the Islamic state? What are its basic characteristics? its fundamental principles? its ultimate objectives? —These questions had begun to agitate the minds of the Muslim India at the very outset of its contemporary political awakening. In the tumultuous years of the pre nineteen forty era, Muslims were in a bewildered state of mind. They had not clear-cut destination before them. Emotionally they were all for Islam but they lacked a clear idea of the Islamic political order. They were, to borrow the words of Tennyson, like :

An infant crying in the night  
An infant crying for the light  
And with no language but a cry.

Maulana Maududi tried to present the Islamic scheme of life to the Muslim India which was crying for it. In this connection he also wrote a paper on the 'Political Theory of Islam' which was read at a meeting of the Inter-Collegiate Muslim Brotherhood, Lahore in October 1939. The paper was published in the form of a pamphlet. We are presenting here its English rendering. The paper has also been revised in accordance with the instructions of the author.

—Editor.

# POLITICAL THEORY OF ISLAM

## I

**W**ITH certain people it has become a sort of fashion to somehow identify Islam with one or the other system of life in vogue at the time. So at this time also there are people who say that Islam is a democracy, and by this they mean to imply that there is no difference between Islam and the democracy as in vogue in the West. Some others suggest that Communism is but the latest and revised version of Islam and it is in the fitness of things that Muslims imitate the Communist experiment of Soviet Russia. Still some others whisper that Islam has elements of dictatorship in it and we should revive the cult of "obedience to the Amir" (the leader). All these people, in their misinformed and misguided zeal to serve what they hold to be the cause of Islam, are always at great pains to prove that Islam contains within itself the elements of all types of contemporary social and political thought and action. Most of the people who indulge in this prattle have no clear idea of the Islamic way of life. They have never made nor try to make a systematic study of the Islamic political order—the place and nature of democracy, social justice, and equality in it. Instead they behave like the proverbial blind men who gave altogether contradictory description of an elephant because one had been able to touch only its tail, the other its legs, the third its belly and the fourth its ears only. Or perhaps they look upon Islam as an orphan when sole hope for survival lies in winning the patronage and the sheltering care of some dominant creed. That is why some people have begun to present apologies on Islam's behalf. As a matter of fact this attitude emerges from an inferiority complex, from the belief that we as Muslims can earn no honour or respect unless we are able to show that our religion resembles the modern creeds and it is in agreement

with most of the contemporary ideologies. These people have done a great disservice to Islam ; they have reduced the political theory of Islam to a puzzle, a hotchpotch. They have turned Islam into a juggler's bag out of which can be produced anything that holds a demand ! Such is the intellectual plight in which we are engulfed. Perhaps it is a result of this sorry state of affairs that some people have even begun to say that Islam has no political or economic system of its own and anything can fit into its scheme.

In these circumstances it has become essential that a careful study of the political theory of Islam should be made in a scientific way, with a view to grasp its real meaning, nature, purpose and significance. Such a systematic study alone can put an end to this confusion of thought and silence those who out of ignorance proclaim that there is nothing like Islamic political theory, Islamic social order and Islamic culture. I hope it will also bring to the world groping in darkness the light that it urgently needs, although it is not yet completely conscious of such a need.

## II

### FUNDAMENTALS OF ISLAM

It should be clearly understood in the very beginning that Islam is not a jumble of unrelated ideas and incoherent modes of conduct. It is rather a well ordered system, a consistent whole, resting on a definite set of clear-cut postulates. Its major tenets as well as detailed rules of conduct are all derived from and logically connected with its basic principles. All the rules and regulations that Islam has laid down for the different spheres of human life are in their essence and spirit a reflexion, an extension and corollary of its first principles. The various phases of Islamic life and activity flow from these fundamental postulates exactly as the plant sprouts forth from its seed. And just as even though the tree may spread in all directions, all its leaves and branches remain firmly attached to the roots and derive sustenance from them and it is always the seed and the



root which determine the nature and form of the tree, similar is the case with Islam. Its entire scheme of life also flows from its basic postulates. Therefore whatever aspect of the Islamic ideology one may like to study, he must, first of all, go to the roots and look to the fundamental principles. Then and then alone he can have a really correct and satisfactory understanding of the ideology and its specific injunctions and a real appreciation of its spirit and nature.

### **The Mission of the Prophets**

The mission of a prophet is to propagate Islam, disseminate the teachings of Allah and establish the divine guidance in this world of flesh and bones. This was the mission of all the divinely inspired prophets who appeared in succession ever since the man's habitation on earth up to the advent of Muhammed (peace be upon him). In fact the mission of all the prophets was one and the same—the preaching of Islam. And Prophet Muhammad (peace be upon him) was the last of their line. With him prophethood came to an end and to him was revealed the final code of human guidance, in all its completeness. All the prophets conveyed to the mankind the guidance which was revealed to them and asked it to acknowledge the absolute sovereignty of God and to render unalloyed obedience to Him. This was the mission which each one of the prophets was assigned to perform.

At first sight this mission appears to be very simple and innocuous. But if you probe a little deeper and examine the full significance and the logical and practical implications of Divine Sovereignty and the concept of *Tawheed* (the Unity of Godhead), you will soon realise that the matter is not so simple as it appears on the surface, and that there must be something revolutionary in a doctrine which roused such bitter opposition and sustained hostility on the part of the non-believers. What strikes us most in the long history of the prophets is that whenever these servants of God proclaimed that "there is no *ilah* (object of worship) except Allah", all the forces of evil made

common cause to challenge them. If it were merely a call to bow down in the places of worship before one God with perfect freedom outside these sacred precincts to owe allegiance to and carry out the will of the powers that be, it would have been the height of folly on the part of the ruling classes to suppress the religious liberties of its loyal subjects for a minor matter which had no bearing on their attitude towards the established government. Let us therefore try to explore the real point of dispute between the Prophets and their opponents.

There are many verses of the Qur'an which make it absolutely clear that the non-believers and polytheists too, who opposed the prophets, did not deny the existence of God nor that He was the sole Creator of heavens and earth and man, nor that the whole mechanism of nature operated in accordance with His commands, nor that it is He Who pours down the rain, drives the winds and controls the sun, the moon, the earth and everything else. Says the Qur'an :

"Say: unto whom (belongeth) the earth and whosoever is therein, if ye have knowledge ? They will say: unto Allah. Say : Will ye not then remember ? Say : Who is Lord of the seven heavens, and Lord of the Tremendous Throne ? They will say : Unto Allah (all that belongeth). Say : Will ye not then keep duty (unto Him) ? (Say) : In Whose hands is the dominion over all things and He protecteth, while against Him there is no protection, if ye have knowledge ? They will say : Unto Allah (all that belongeth). Say : How then are ye bewitched ?"

(23 : 84-89).

"And if you were to ask them : Who created the heavens and the earth, and constrained the sun and the moon (to their appointed task) ? they would say : Allah. How then are they turned away !.....And if thou wert to ask them : Who causeth water to come down from the sky, and therewith reviveth the earth after its death ? they verily would say : Allah". (29 : 61-63)

"And if thou asked them who created them, they will

surely say : Allah. How then are they turned away".

(43 : 87)

These verses make it abundantly clear that the dispute was not about the existence of God or His being the Creator and Lord of heavens and earth. All men acknowledged these truths. Hence there was no question of there being any dispute on what was already admitted on all hands. The question arises, then what was it that gave rise to the tremendous opposition that every prophet without any exception had to face when he made this call ? The Qur'an states that the whole dispute centered round the uncompromising demand of the prophets that the non-believers should recognise as their *rabb* (Lord) and *ilah* (Master and Law-giver) also the very Being whom they acknowledged as their Creator and that they should assign this position to none else. But the people were not prepared to accept this demand of the prophet.

Let us now try to find out the real cause of the refusal and what the terms *ilah* and *rabb* mean. Furthermore, why did the prophet insist that Allah alone should be recognised and acknowledged as *ilah* and *rabb* and why did the whole world range itself against them upon this apparently simple demand ?

The Arabic word *ilah* stands for *ma'bud* (i.e., the object of worship) which in itself is derived from the word '*abd*', meaning a servant or slave. The relationship which exists between man and God is that of 'the worshipper' and 'the worshipped'. Man is to offer '*ibadat*' to God and is to live like His '*abd*'.

And '*ibadat*' does not merely mean ritual or any specific form of prayer. It means a life of continuous service and unremitting obedience like the life of a slave in relation to his Lord. To wait upon a person in service, to fold one's hands in reverence to him, to bow down one's head in acknowledgement of his elevated position, to exert oneself in obedience to his commands, to carry out his orders and cheerfully submit to all the toil and discipline involved therein, to humble oneself in the presence of the master, to offer what he demands, to obey what he commands, to set one's face steadily against the cause of his

displeasure, and to sacrifice even one's life when such is his pleasure—these are the real implications of the term '*ibadat*' (worship or service) and a man's true *ma'bud* (object of worship) is he whom he worships in this manner.

And what is the meaning of the word '*rabb*'? In Arabic it literally means "one who nourishes and sustains and regulates and perfects". Since the moral consciousness of man requires that one who nourishes, sustains and provides for us has a superior claim on our allegiance, the word *rabb* is also used in the sense of master or owner. For this reason the Arabic equivalent for the owner of property is *rabb al-mal* and for the owner of a house, *rabb al-dar*. A person's '*rabb*' is one whom he looks upon as his nourisher and patron; from whom he expects favour and obligations; to whom he looks for honour advancement and peace; whose displeasure he considers to be prejudicial to his life and happiness; whom he declares to be his lord and master; and lastly, whom he follows and obeys.<sup>1</sup>

Keeping in view the real meaning of these two words '*ilah*' and '*rabb*' it can be easily found who is it that may rightfully claim to be man's *Ilah* and *Rabb* and who can, therefore, demand that he should be served, obeyed and worshipped. Trees, stones, rivers, animals, the sun, the moon and the stars, none of them can venture to lay claim to this position in relation to man. It is only man who can, and does, claim godhood in relation to his fellow-beings. The desire for godhood can take root only in man's mind. It is only man's excessive lust for power and desire for exploitation that prompts him to project himself on other people as a god and extract their obedience; force them to bow down before him in reverential awe, and make them instruments of his self-aggrandisement. The pleasure of posing as a god is more enchanting and appealing than anything else that man has yet been able to discover. Whoever possesses power or wealth or cleverness or any other superior faculty, develops a strong

1. For detailed discussion over the meaning and concept of *ilah* and *rabb* see: Abul A'la Maududi, *Qur'an Ki Char Bunyadi Istilahen* (Four Basic Terms of the Qur'an) Islamic Publications, Ltd., Lahore.

inclination to outstep his natural and proper limits, to extend his area of influence and thrust his godhood upon such of his fellow-men as are comparatively feeble, poor, weak-minded or deficient in any manner.

Such aspirants to godhood are of two kinds and accordingly they adopt two different lines of action. There is a type of people who are comparatively bold or who possess adequate means of forcing their claim on those over whom they wield power and who consequently make a direct claim to godhood. For instance, there was Pharaoh who was so intoxicated with power and so proud of his empire that he proclaimed to the inhabitants of Egypt: "*Ana rabbakum al-a'la*" (I am your highest Lord).

and "*Ma'alimtu lakum min ilahin ghairi*" (I do not know of any nther '*ilah*' for you hut myself).

When Prophet Moses approached him with a demand for the liberation of his people and told him that he too should surrender himself to the Lord of the Universe, Pharaoh replied that since he had the power to cast him into the prison-house, Moses should rather acknowledge him as '*ilah*'.<sup>1</sup> Similarly, there was another king who had an argument with Prophet Abraham. Ponder carefully over the words in which the Qur'an has narrated this episode. It says:

"Bethink thee of him who had an argument with Abraham about his Lord because Allah had given him the kingdom; how, when Abraham said: My Lord is He Who giveth life and causeth death, he answered: I give life and cease death. Abraham said: Lo! Allah causeth the sun to rise in the East, so do thou cause it to come up from the West. Thus was the disbeliever king flahbergasted".

(2: 258)

Why was the unbeliever king flahbergasted? Not because he denied the existence of God. He did believe that God was the ruler of the universe and that He alone made the sun rise

1. *Al-Qur'an*; 26: 29; 28: 33; 79: 24.

and set. The question at issue was not the dominion over the sun and the moon and the universe but that of the *allegiance of the people* ; not that who should be regarded as controlling the forces of nature, but that *who should have the right to claim the obedience of men*. He did not put forth the claim that he was *Allah* ; what he actually demanded was that no objection should be cast over the absoluteness of his authority over his subjects. His authority as the ruler should not be challenged. This claim was based on the fact that he held the reins of government : he could do whatever he liked with the property or the lives of his people ; he had absolute power to punish his subjects with death or to spare them. He, therefore, demanded from Abraham that the latter should recognise him as his master, serve him and do his bidding. But when Abraham declared that he would obey, serve and accept no one but the Lord of the universe, the king was bewildered and shocked and did not know how to bring such a person under his control.

This claim to godhood which Pharaoh and Nimrod had put forth was by no means peculiar to them. Rulers all over the world in ages past and present have advanced such claims. In Iran the words '*Khuda*' (Master) and '*Khudawand*' (Lord) were commonly employed in relation to the king and all the ceremonies indicative of servility were performed before him, in spite of the fact that no Iranian looked upon the king as the lord of the universe, that is to say God, nor did the king represent himself as such. Similarly, the ruling dynasties in India claimed descent from the gods, the solar and lunar dynasties are well known down to this day. The '*raja*' was called '*an-data*' (the provider of sustenance) and people prostrated themselves before him although he made no pretence of being God and his subjects never recognised him as such. Much the same was, and still is, the state of affairs in all other countries.

Words synonymous with '*ilah*' and '*rabb*' are still used in direct reference to rulers of many places. Even where this is not customary, the attitude of the people towards their rulers

is similar to what is implied by these two words. It is not necessary for a man who claims godhood that he should openly declare himself to be an 'ilah' or 'rabb'. All persons who exercise unqualified dominion over a group of men, who impose their will upon others, who make them their instruments and seek to control their destinies in the same manner as Pharaoh and Nimrod did in the hey day of their power, are essentially claimants to godhood, though the claim may be tacit, veiled and unexpressed. And those who serve and obey them admit their godhood even if they do not say so by word of mouth.

In contrast to these people who directly seek recognition of their godhood there is another type of men who do not possess the necessary means or strength to get themselves accepted as 'ilah' or 'rabb'. But they are resourceful and cunning enough to cast a spell over the minds and hearts of the common people. By the use of sinister methods, they invest some spirit, god, idol, tomb, plant, or tree with the character of 'ilah' and dope the common people successfully into believing that these objects are capable of doing them harm and bringing them good: that they can provide for their needs, answer their prayers and afford them shelter and protection from evils which beset them all around. They tell them in effect: 'If you do not seek their pleasure and approval, they will involve you in famines, epidemics and afflictions. But if you approach them in the proper way and solicit their help they will come to your aid. We know the methods by which they can be propitiated and their pleasure can be secured. We alone can show you the means of access to these deities. Therefore, acknowledge our superiority, seek our pleasure and entrust to our charge your life, wealth, and honour'. Many stupid persons are caught in this trap and thus, under cover of false gods, is established the godhood and supremacy of priests and shrine keepers.

There are some others belonging to the same category who employ the arts of soothsaying, astrology, fortune-telling, charms, incantations etc. There are yet others who, while owing allegiance to God, also assert that one cannot gain direct

access to God. They claim that they are the intermediaries through whom one should approach his threshold ; that all ceremonies should be performed through their mediation ; and that all religious rites from one's birth to death can be performed only at their hands. There are still others who proclaim themselves to be the hearers of the Book of God and yet they deliberately keep the common people ignorant of its meaning and contents. Constituting themselves into mouthpieces of God, they start dictating others what is lawful (*halal*) and what is unlawful (*haram*). In this way their word becomes law and they force people to obey their own commands instead of those of God. This is the source of Brahmanism and Papacy which has appeared under various names and in diverse forms in all parts of the world from times immemorial down to the present day and in consequence of which certain families, races and classes have imposed their will and authority over large masses of men and women.

If you were to look at the matter from this angle, you will find that the root-cause of all evil and mischief in the world is the domination of man over man, be it direct or indirect. This was the origin of all the troubles of mankind and even to this day it remains the main cause of all the misfortunes and vices which have brought untold misery on the teeming humanity. God, of course, knows all the secrets of human nature. But the truth of this observation has also been confirmed and brought home to humanity by the experience of thousands of years that man cannot help setting up someone or other as his 'god', '*ilah*' and '*rabb*', and looking up to him for help and guidance in the complex and baffling affairs of his life and obeying his commands. This fact has been established beyond question by the historical experience of mankind that if you do not believe in God, some artificial god will take His place in your thinking and behaviour. It is even possible that instead of one real God, a number of false gods, '*ilahs*' and '*rabbs*' may impose themselves upon you.



Even today man is enchained in the slavery of many a false god. May he be in Russia or America, Italy or Yugoslavia, England or China, he is generally under the spell of some party, some ruler, some leader or group, some money-magnate or the like in such a manner that man's control over men, man's worship of man, man's surveillance of man continue unabated. Modern man has discarded nature-worship, but man-worship he still does. In fine, wherever you turn your eyes, you will find that one nation dominates another, one class holds another in subjection, or a political party having gained complete ascendancy, constitutes itself as the arbiter of men's destiny ; or again in some places a dictator concentrates in his hands all power and influence setting himself up as the lord and master of the people. Nowhere has man been able to do without an '*ilah*' !

What are the consequences of this domination of man by man, of this attempt by man to play the role of divinity ? The same that would follow from a mean and incompetent person being appointed a police commissioner or some ignorant and narrow-minded politician being exalted to the rank of a prime minister. For one thing, the effect of godhood is so intoxicating that one who tastes this powerful drink can never keep himself under control. Even assuming that self-control is possible, the vast knowledge, the keen insight, the unquestioned impartiality and perfect disinterestedness which are required for carrying out the duties of godhood, will always remain out of the reach of man. That is why tyranny, despotism, intemperance, unlawful exploitation, and inequality reign supreme, whenever men's overlordship and domination (*ilahiyyat* and *rabubiyyat*) over man are established. The human soul is inevitably deprived of its natural freedom ; and man's mind and heart and his inborn faculties and aptitudes are subjected to such vexatious restrictions that the proper growth and development of his personality is arrested. How truly did the Holy Prophet observe :

"God, the Almighty says : 'I created men with a pliable nature ; then the devils came and contrived to lead them astray from their faith and prohibited for them

what I had made lawful for them'.<sup>1</sup>

As I have indicated above, this is the sole cause of all the miseries and conflicts from which man has suffered during the long course of human history. This is the real impediment to his progress. This is the canker which has eaten into the vitals of his moral, intellectual, political and economic life, destroying all the values which alone make him human and mark him off from animals. So it was in the remote past and so it is today. The only remedy for this dreadful malady lies in the repudiation and renunciation by man of all masters and in the explicit recognition by him of God Almighty as his sole master and lord (*ilah* and *rabb*). There is no way to his salvation except this ; for even if he were to become an atheist and heretic he would not be able to shake himself free of all these masters (*ilahn* and *rabbs*).

This was the radical reformation effected from time to time by the Prophets in the life of humanity. They aimed at the demolition of man's supremacy over man. Their real mission was to deliver man from this injustice, this slavery of false gods, this tyranny of men over man, and this exploitation of the weak by the strong. Their object was to thrust back into their proper limits those who had over-stepped them and to raise to the proper level those who had been forced down from it. They endeavoured to evolve a social organisation based on human equality in which man should be neither the slave nor the master of his fellow-beings and in which all men should become the servants of one real Lord. The message of all the Prophets that came into the world was the same, namely :

"O my people, worship Allah. There is no *ilah* whatever for you except He". (17 : 59, 75, 86 ; also 11 : 50, 61, 84).

This was precisely what Noah said ; this is exactly what Hud declared ; Salih affirmed the same truth ; Shoaib gave the same message, and the same doctrine was repeated and confirmed by Moses, Christ and by Prophet Muhammad (peace be upon

1. Al-Madani, *Al-Ittehafat al-sanyya fi-l-Ahadith al-Qudriyya*. Hadith No. 343, Daira't al-Ma'arif, Hyderabad (Deccan), 1323 A.H.

them all). The last of the Prophets, Muhammad (God's blessing and peace be upon him) said :

"I am only a warner, and there is no God save Allah, the One, the Absolute Lord of the heavens and the earth and all that is between them". (38 : 65-66)

"Lo ! Your Lord is Allah Who created the heavens and the earth in six days, then mounted He the Throne. He covereth the night with the day, which is in haste to follow and hath made the sun and the moon and the stars subservient by His command. His verily is all creation and (His verily is the) commandment". (17 : 54)

"Such is Allah, your Lord. There is no God save Him, the Creator of all things, so worship Him. And He taketh care of all things". (16 : 102)

"And they are not enjoined anything except that they should serve Allah, keeping religion pure for Him, as men by nature upright". (98 : 5)

"Come to a word common between us and between you, that we shall worship none but Allah, and that we shall ascribe no partner unto Him and that none of us shall take others for lords beside Allah". (3 : 54)

This was the proclamation that released the human soul from its fetters and set man's intellectual and material powers free from the bonds of slavery that held them in subjection. It relieved them of the burden that weighed heavily upon them and was breaking their backs. It gave them a real charter of liberty and freedom. The Holy Qur'an refers to this marvellous achievement of the Prophet of Islam when it says :

"And he (the Prophet) relieves them of their burden and the chains that were around them". (7 : 157)

### III

#### FIRST PRINCIPLE OF ISLAMIC POLITICAL THEORY

The belief in the Unity and the Sovereignty of Allah is the foundation of the social and moral system propounded by the

Prophets. It is the very starting-point of the Islamic political philosophy. The basic principle of Islam is that human beings must, individually and collectively, surrender all rights on overlordship, legislation and exercising of authority over others. No one should be allowed to pass orders or make commands in *his own right* and no one ought to accept the obligation to carry out such commands and obey such orders. None is entitled to make laws on his own authority and none is obliged to abide by them. This right vests in Allah alone ;

"The Authority rests with none but Allah, He commands you not to surrender to any one save Him. This is the right way (of life)". (12 : 40)

"They ask : 'have we also got some authority ?' Say ; 'all authority belongs to God alone'." (3 : 154)

"Do not say wrongly with your tongues that this is lawful and that is unlawful". (16 : 116)

"Whoso does not establish and decide by that which Allah hath revealed, such are disbelievers." (5 : 44)

According to this theory, sovereignty belongs to Allah. He alone is the law-giver. No man, even if he be a prophet, has the right to order others in *his own right* to do or not to do certain things. The Prophet himself is subject to God's commands :

"I do not follow anything except what is revealed to me". (6 : 50)

Other people are required to obey the Prophet because he enunciates not his own but God's commands :

"We sent no messenger save that he should be obeyed by Allah's leave". (4 : 64)

"They are the people unto whom We gave the Scripture and Command and Prophethood". (6 : 90)

"It is not (possible) for any human being unto whom Allah has given the Scripture and the Wisdom and the Prophethood that he should have thereafter said unto mankind : Become slaves of me instead of Allah ; but (what he said was) be ye faithful servants of the Lord".

(3 : 79)

Thus the main characteristics of an Islamic State that can be deduced from these express statements of the Holy Qur'an are as follows :—

(1) No person, class or group, not even the entire population of the state as a whole, can lay claim to sovereignty. God alone is the real sovereign ; all others are merely His subjects ;

(2) God is the real law-giver and the authority of absolute legislation vests in Him. The believers cannot resort to totally independent legislation nor can they modify any law which God has laid down, even if the desire to effect such legislation or change in Divine laws is unanimous ;<sup>1</sup> and

(3) An Islamic state must, in all respects, be founded upon the law laid down by God through His Prophet. The government which runs such a state will be entitled to obedience in its capacity as a political agency set to enforce the laws of God and only in so far as it acts in that capacity. If it disregards the law revealed by God, its commands will not be binding on the believers.

## IV

### THE ISLAMIC STATE ITS NATURE AND CHARACTERISTICS

The preceding discussion makes it quite clear that Islam, speaking from the view-point of political philosophy, is the very antithesis of secular Western democracy. The philosophical foundation of Western democracy is the sovereignty of the people. In it, this type of absolute powers of legislation—of the determination of values and of the norms of behaviour—rest in the hands of the people. Law-making is their prerogative and legislation must correspond to the mood and temper of their opinion. If a particular piece of legislation is desired by the masses, however, ill-conceived, it may be from religious and

1. Here the *absolute right of legislation* is being discussed. In the Islamic political theory this right vests in Allah alone. As to the scope and extent of human legislation provided by the *Shari'ah* itself please see Chapter 2 'Legislation and *Ijtihad* in Islam' and Chapter 6 'First Principles of Islamic State'.—*Editor*.

morel viewpoint, steps have to be taken to place it on the statute book ; if the people dislike any law and demand its abrogation, howsoever just and rightful, it might be, it has to be expunged forthwith. This is not the case in Islam. On this count, Islam has no trace of Western democracy. Islam, as already explained, altogether repudiates the philosophy of popular sovereignty and rears its polity on the foundations of the sovereignty of God and the viceregency (*Khilafat*) of man.<sup>1</sup>

A more apt name for the Islamic polity would be the "kingdom of God" which is described in English as a "theocracy". But Islamic theocracy is something altogether different from the theocracy of which Europe had a bitter experience wherein a priestly class, sharply marked off from the rest of the population, exercises unchecked domination and enforces laws of its own making in the name of God, thus virtually imposing its own divinity and godhood upon the common people.<sup>2</sup> Such a system of government is satanic rather than divine. Contrary to this, the theocracy built up by Islam is not ruled by any particular religious class but by whole community of Muslims including the rank and file. The entire Muslim population runs the state in accordance with the Book of God and the practice of His Prophet. If I were permitted to coin a new term, I would describe this system of government as a "theo-democracy", that is to say a divine democratic government, because

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1. Here it must be clearly understood that democracy as a 'philosophy' and democracy as a 'form of organisation' are not the same thing. In the form of organisation, Islam has its own system of democracy as is explained in the following pages. But as a philosophy, the two i.e., Islam and Western democracy are basically different, rather opposed to each other.—*Editor*.
  2. "Theocracy : a form of government in which God (or a deity) is recognised as the king or immediate ruler, and his laws are taken as the statute book of kingdom, these laws being usually administered by a priestly order as his ministers and agents ; hence (loosely) a system of government by a sacerdotal order claiming a divine commission". .*The Shorter Oxford Dictionary*, Vol. II, Oxford, 1956, p. 2166.

under it the Muslims have been given a limited popular sovereignty under the suzerainty of God. The executive under this system of government is constituted by the general will of the Muslims who have also the right to depose it. All administrative matters and all questions about which no explicit injunction is to be found in the *Shari'ah* are settled by the consensus of opinion among the Muslims. Every Muslim who is capable and qualified to give a sound opinion on matters of Islamic law, is entitled to interpret the law of God when such interpretation becomes necessary. In this sense the Islamic polity is a democracy. But as has been explained above, it is a theocracy in the sense that where an explicit command of God or His Prophet already exists, no Muslim leader or legislature, or any religious scholar can form an independent judgment, not even all the Muslims of the world put together, have any right to make the least alteration in it.

Before proceeding further, I feel that I should put in a word of explanation as to why these limitations and restrictions have been placed upon popular sovereignty in Islam, and what is the nature of these limitations and restrictions. It may be said that God has, in this manner, taken away the liberty of human mind and intellect instead of safeguarding it as I was trying to prove. My reply is that God has retained the right of legislation in His own hand not in order to deprive man of his natural freedom but to safeguard that very freedom. His purpose is to save man from going astray and inviting his own ruin.

One can easily understand this point by attempting a little analysis of the so-called Western secular democracy. It is claimed that this democracy is founded on popular sovereignty. But everybody knows that the people who constitute a state do not all of them take part either in legislation or in its administration. They have to delegate their sovereignty to their elected representatives so that the latter may make and enforce laws on their behalf. For this purpose an electoral system is set up. But as a divorce has been effected between politics and religion, and as a result of this secularisation, the society and particularly its politically active elements have ceased to attach much

or any importance to morality and ethics. And this is also a fact that only those persons generally come to the top who can dupe the masses by their wealth, power and deceptive propaganda. Although these representatives come into power by the votes of the common people, they soon set themselves up as an independent authority and assume the position of overlords (*ilāhs*). They often make laws not in the best interest of the people who raised them to power but to further their own sectional and class interests. They impose their will on the people by virtue of the authority delegated to them by those over whom they rule. This is the situation which besets people in England, America and in all those countries which claim to be the haven of secular democracy.

Even if we overlook this aspect of the matter and admit that in these countries laws are made according to the wishes of the common people, it has been established by experience that the great mass of the common people are incapable of perceiving their own true interests. It is the natural weakness of man that in most of the affairs concerning his life he takes into consideration only some one aspect of reality and loses sight of other aspects. His judgments are usually one-sided and he is swayed by emotions and desires to such an extent that rarely, if ever, can he judge important matters with the impartiality and objectivity of scientific reason. Quite often he rejects the plea of reason simply because it conflicts with his passions and desires. I can cite many instances in support of this contention but to avoid prolixity I shall content myself with giving only one example: the Prohibition Law of America. It had been rationally and logically established that drinking is injurious to health, produces deleterious effects on mental and intellectual faculties and leads to disorder in human society. The American public accepted these facts and agreed to the enactment of the Prohibition Law. Accordingly the law was passed by the majority vote. But when it was put into effect, the very same people by whose vote it had been passed, revolted against it. The worst kinds of wine were illicitly



manufactured and consumed, and their use and consumption became more widespread than before. Crimea increased in number. And eventually drinking was legalised by the vote of the same people who had previously voted for its prohibition. This sudden change in public opinion was not the result of any fresh scientific discovery or the revelation of new facts providing evidence against the advantages of prohibition, but because the people had been completely ensnared by their habit and could not forego the pleasure of self-indulgence. They delegated their own sovereignty to the evil spirit in them and set up their own desire and passions at their "*ilahs*" (gods) at whose call they all went in for the repeal of the very law they had passed after having been convinced of its rationality and correctness. There are many other similar instances which go to prove that man is not competent to become an absolute legislator. Even if he secures deliverance from the services of other *ilahs*, he becomes a slave to his own petty passions and exalts the devil in him to the position of a supreme Lord. Limitations on human freedom, provided they are appropriate and do not deprive him of all initiative are absolutely necessary in the interest of man himself.<sup>1</sup>

That is why God has laid down those limits which in Islamic phraseology, are termed 'Divine Limits' (*Hudud-Allah*) These limits consist of certain principles, check and balances and specific injunctions in different spheres of life and activity, and they have been prescribed in order that man may be trained to lead a balanced and moderate life. They are intended to lay down the broad framework within which man is free to legislate, decide his own affairs and frame subsidiary laws and regulations for his conduct. These limits he is not permitted to

1. The question however is: Who is to impose these restrictions? According to the Islamic view it is only Allah the Creator, the Nourisher, the All-Knowing Who is entitled to impose restrictions on human freedom and not any man. No man is entitled to do so. If any man arbitrarily imposes restrictions on human freedom, that is despotism pure and simple. In Islam there is no place for such despotism.—*Editor*.

overstep and if he does so, the whole scheme of his life will go away.

Take for example man's economic life. In this sphere God has placed certain restrictions on human freedom. The right to private property has been recognised, but it is qualified by the obligation to pay *Zakat* (poor dues) and the prohibition of interest, gambling and speculation. A specific law of inheritance for the distribution of property among the largest number of surviving relations on the death of its owner has been laid down and certain forms of acquiring, accumulating and spending wealth have been declared unlawful. If people observe these just limits and regulate their affairs within these boundary walls, on the one hand their personal liberty is adequately safeguarded and, on the other possibility of class war and domination of one class over another, which begins with capitalist oppression and ends in working-class dictatorship, is safely and conveniently eliminated.

Similarly in the sphere of family life, God has prohibited the unrestricted intermingling of the sexes and prescribed *pardah*, recognised man's guardianship of woman, and clearly defined the rights and duties of husband, wife and children. The laws of divorce and separation have been clearly set forth, conditional polygamy has been permitted and penalties for fornication and false accusations of adultery have been prescribed. He has thus laid down limits which, if observed by man, would stabilise his family life and make it a haven of peace and happiness. There would remain neither that tyranny of male over female which makes family life an inferno of cruelty and oppression, nor that satanic flood of female liberty and licence which threatens to destroy human civilization in the West.

In like manner, for the preservation of human culture and society God has, by formulating the law of *Qisas* (Retaliation), commanding to cut off the hands for theft, prohibiting wine-drinking, placing limitations on uncovering of one's private parts and by laying down a few similar permanent rules and regulations, closed the door of social disorder for ever. I have

no time to present to you a complete list of all the Divine Limits and show in detail how essential each one of them is for maintaining equilibrium and poise in life. What I want to bring home to you here is that through these injunctions God has provided a permanent and immutable code of behaviour for man, and that it does not deprive him of any essential liberty nor does it dull the edge of his mental faculties. On the contrary, it sets a straight and clear path before him, so that he may not, owing to his ignorance and weaknesses which he inherently possesses, lose himself in the maze of destruction and instead of wasting his faculties in the pursuit of wrong ends, he may follow the road that leads to success and progress in this world and the hereafter. If you have ever happened to visit a mountainous region, you must have noticed that in the winding mountain paths which are bounded by deep caves on the one side and lofty rocks on the other, the border of the road is barricaded and protected in such a way as to prevent travellers from straying towards the abyss by mistake. Are these barricades intended to deprive the way-farer of his liberty? No, as a matter of fact, they are meant to protect him from destruction; to warn him at every bend of the dangers ahead and to show him the path leading to his destination. That precisely is the purpose of the restrictions (*hudud*) which God has laid down in His revealed Code. These limits determine what direction man should take in life's journey and they guide him at every turn and pass and point out to him the path of safety which he should steadfastly follow.

As I have already stated, this code enacted as it is by God, is unchangeable. You can, if you like, rebel against it, as some Muslim countries have done. But you cannot alter it. It will continue to be unalterable till the last day. It has its own avenues of growth and evolution, but no human being has any right to tamper with it. Whenever the Islamic State comes into existence, this code would form its fundamental law and will constitute the mainspring of all its legislation. Everyone who desires to remain a Muslim is under an obligation to follow the

Qur'an and the *Sunnah* which must constitute the basic law of an Islamic State.

### The Purpose of the Islamic State

The purpose of the state that may be formed on the basis of the Qur'an and the *Sunnah* has also been laid down by God. The Qur'an says :

"We verily sent Our messengers with clear proofs, and revealed with them the Scripture and the Balance, that mankind may observe right measure ; and We revealed iron, wherein is mighty power and (many) uses for mankind". (57 : 25)

In this verse steel symbolises political power and the verse also makes it clear that the mission of the prophets is to create conditions in which the mass of people will be assured of social justice in accordance with the standards enunciated by God in His Book which gives explicit instructions for a well-disciplined mode of life. In another place God has said :—

"(Muslims are) those who, if We give them power in the land, establish the system of *Salat* (worship) and *Zakat* (poor dues) and enjoin virtue and forbid evil and inequity". (22 : 41)

"You are the best community sent forth unto mankind ; ye enjoin the Right conduct and forbid the wrong ! and ye believe in Allah." (3 : 110)

It will readily become manifest to anyone who reflects upon these verses that the purpose of the state visualised by the Holy Qur'an is not negative but positive. The object of the state is not merely to prevent people from exploiting each other to safeguard their liberty and to protect its subjects from foreign invasion. It also aims at evolving and developing that well-balanced system of social justice which has been set forth by God in His Holy Book. Its object is to eradicate all forms of evil and to encourage all types of virtue and excellence expressly mentioned by God in the Holy Qur'an. For this purpose political power will be made use of as and when the occasion demands ; all means of propaganda and peaceful persuasion will be

employed ; the moral education of the people will also be undertaken ; and social influence as well as the force of public opinion will be harnessed to the task.

### **Islamic State is Universal and All-Embracing**

A state of this sort cannot evidently restrict the scope of its activities. Its approach is universal and all-embracing. Its sphere of activity is coextensive with the whole of human life. It seeks to mould every aspect of life and activity in consonance with its moral norms and programme of social reform. In such a state no one can regard any field of his affairs as personal and private. Considered from this aspect the Islamic State bears a kind of resemblance to the Fascist and Communist states. But you will find later on that, despite its all-inclusiveness, it is something vastly and basically different from the totalitarian and authoritarian states. Individual liberty is not suppressed under it nor is there any trace of dictatorship in it. It presents the middle course and embodies the best that the human society has ever evolved. The excellent balance and moderation that characterise the Islamic system of government and the precise distinctions made in it between right and wrong elicit from all men of honesty and intelligence the admiration and the admission that such a balanced system could not have been framed by anyone but the Omniscient and All-Wise God.

### **Islamic State is an Ideological State**

Another characteristic of the Islamic State is that it is an ideological state. It is clear from a careful consideration of the Qur'an and the *Sunnah* that the state in Islam is based on an ideology and its objective is to establish that ideology. State is an instrument of reform and must act likewise. It is a dictate of this very nature of the Islamic State that such a state should be run only by those who believe in the ideology on which it is based and in the Divine Law which it is assigned to administer. The administrators of the Islamic State must be those whose whole life is devoted to the observance and enforcement of this Law, who not only agree with its reformatory programme and fully believe in it but thoroughly comprehend its spirit and are

acquainted with its details. Islam does not recognise any geographical, linguistic or colour bars in this respect. It puts forward its code of guidance and the scheme of its reform before all men. Whoever accepts this programme, no matter to what race, nation or country he may belong, can join the community that runs the Islamic State. But those who do not accept it are not entitled to have any hand in shaping the fundamental policy of the state. They can live within the confines of the state as non-Muslim citizens (*zimmi*s). Specific rights and privileges have been accorded to them in the Islamic Law. A *zimmi's* life, property and honour will be fully protected and if he is capable of any service, his services will also be made use of. He will not, however, be allowed to influence the basic policy of this ideological state. The Islamic State is based on a particular ideology and it is the community which believes in the Islamic ideology that pilots it. Here again, we notice some sort of resemblance between the Islamic and the Communist states. But the treatment meted out by the Communist states to persons holding creeds and ideologies other than its own bears no comparison with the attitude of the Islamic State. Unlike the Communist state, Islam does not impose its social principles on others by force, nor does it confiscate their properties or unleash a reign of terror by mass executions of the people and their transportation to the slave camps of Siberia. Islam does not want to eliminate its minorities, it wants to protect them and give them the freedom to live according to their own culture. The generous and just treatment which Islam has accorded to non-Muslims in an Islamic State and the fine distinction drawn by it between justice and injustice and good and evil will convince all those who are not prejudiced against it, that the prophets sent by God accomplish their task in an altogether different manner—something radically different and diametrically opposed to the way of the false reformers who strut about here and there on the stage of history".<sup>1</sup>

1. This paper was written in 1939 and in it the author has dealt with the theoretical aspect of the problem only. In his later articles he has  
[Contd.]

## V

## THE THEORY OF THE CALIPHATE AND THE NATURE OF DEMOCRACY IN ISLAM

I will now try to give a brief exposition of the composition and structure of the Islamic State. I have already stated that in Islam, God alone is the real sovereign. Keeping this cardinal principle in mind if we consider the position of those persons who set out to enforce God's law on earth, it is but natural to say that they should be regarded as representatives of the Supreme Ruler. Islam has assigned precisely that very position to them. Accordingly the Holy Qur'an says :—

"Allah has promised to those among you who believe and do righteous deeds that He will assuredly make them to succeed (the present rulers) and grant them vicegerency in the land just as He made those before them to succeed (others)." (24 : 55)

discussed the practical aspects as well. In his article on the 'Rights of Non-Muslims in Islamic State' (see Chapter VIII) he writes :

"However, in regard to a parliament or a legislature of the modern conception, which is considerably different from *Shura* in its traditional sense, this rule could be relaxed to allow non-Muslims to become its members provided that it has been fully ensured in the Constitution that :

- (i) It would be *ultra vires* of the parliament or the legislature to enact any law which is repugnant to the Qur'an and the *Sunnah* .
- (ii) The Qur'an and the *Sunnah* would be the chief source of the public law of the land.
- (iii) The head of the state or the assenting authority would necessarily be a Muslim. With these provisions ensured, the sphere of influence of non-Muslims would be limited to matters relating to the general problems of the country or to the interests of minorities concerned and their participation would not damage the fundamental requirements of Islam".

The non-Muslim cannot occupy key-posts—posts from where the ideological policy of the state can be influenced—but they can occupy general administrative posts and can act in the service of the state.

For a detailed discussion of their position see Chapter VIII.—*Editor*.

The verse illustrates very clearly the Islamic theory of state. Two fundamental points emerge from it :

1. The first point is that Islam uses the term 'vicegerency' (*khilafat*) instead of sovereignty. Since, according to Islam, sovereignty belongs to God alone, anyone who holds power and rules in accordance with the laws of God would undoubtedly be the vicegerent of the Supreme Ruler and will not be authorised to exercise any powers other than those delegated to him.

2. The second point stated in the verse is that the power to rule over the earth has been promised to *the whole community of believers* ; it has not been stated that any particular person or class among them will be raised to that position. From this it follows that all believers are repositories of the Caliphate. The Caliphate granted by God to the faithful is the popular vicegerency and not a limited one. There is no reservation in favour of any family, class or race. Every believer is a Caliph of God in his individual capacity. By virtue of this position he is individually responsible to God. The Holy Prophet has said : "Everyone of you is a ruler and everyone is answerable for his subjects". Thus one Caliph is in no way inferior to another.

This is the real foundation of democracy in Islam. The following points emerge from an analysis of this conception of popular vicegerency :

(a) A society in which everyone is a caliph of God and an equal participant in this caliphate, cannot tolerate any class divisions based on distinctions of birth and social position. All men enjoy equal status and position in such a society. The only criterion of superiority in this social order is personal ability and character. This is what has been repeatedly and explicitly asserted by the Holy Prophet :

"No one is superior to another except in point of faith and piety. All men are descended from Adam and Adam was made of clay".

"An Arah has no superiority over a non-Arah nor a non-Arah over an Arab ; neither does a white man possess any superiority over a black man nor a black man over a white



one, except in point of piety".

After the conquest of Mecca, when the whole of Arabia came under the dominion of the Islamic State, the Holy Prophet addressing the members of his own clan, who in the days before Islam enjoyed the same status in Arabia as the Brahmins did in ancient India, said :

"O people of Qurayish ! Allah has rooted out your haughtiness of the days of Ignorance and the pride of ancestry. O men, all of you are descended from Adam and Adam was made of clay. There is no pride whatever in ancestry; there is no merit in an Arab as against a non-Arab nor in a non-Arab as against an Arab. Verily the most meritorious among you in the eyes of God is he who is the most pious".

(b) In such a society no individual or group of individuals will suffer any disability on account of birth, social status, or profession that may in any way impede the growth of his faculties or hamper the development of his personality. Every one would enjoy equal opportunities of progress. The way would be left open for him to make as much progress as possible according to his inborn capacity and personal merits without prejudice to similar rights of other people. Thus, unrestricted scope for personal achievement has always been the hallmark of Islamic society. Slaves and their descendants were appointed as military officers and governors of provinces, and noblemen belonging to the highest families did not feel ashamed to serve under them. Cobblers who used to stitch and mend shoes rose in the social scale and became leaders of highest order (*imams*) : Weavers and cloth-sellers became judges, *muftis* and jurists and to this day they are reckoned as the heroes of Islam. The Holy Prophet has said :

"Listen and obey even if a negro is appointed as a ruler over you".

(c) There is no room in such a society for the dictatorship of any person or group of persons since everyone is a caliph of God here'n. No person or group of persons is entitled to become an

absolute ruler by depriving the rank and file of their inherent right of caliphate. The position of a man who is selected to conduct the affairs of the state is no more than this : that all Muslims (or, technically speaking, all caliphs of God) delegate their caliphate to him for administrative purposes. He is answerable to God on the one hand and on the other to his fellow 'caliphs' who have delegated their authority to him. Now, if he raises himself to the position of an irresponsible absolute ruler, that is to say, a dictator he assumes the character of a usurper rather than a caliph, because dictatorship is the negation of popular vicegerency. No doubt the Islamic State is an all-embracing state and comprises within its sphere all departments of life, but this all-inclusiveness and universality are based upon the universality of Divine Law which an Islamic ruler has to observe and enforce. The guidance given by God about every aspect of life will certainly be enforced in its entirety. But an Islamic ruler cannot depart from these instructions and adopt a policy of regimentation of his own. He cannot force people to follow or not to follow a particular profession ; to learn or not to learn a special art ; to use or not to use a certain script ; to wear or not to wear a certain dress and to educate or not to educate their children in a certain manner. The powers which the dictators of Russia, Germany and Italy have appropriated or which Atatürk has exercised in Turkey have not been granted by Islam to its *Amir* (leader). Besides this, another important point is that in Islam every individual is held personally answerable to God. This personal responsibility cannot be shared by anyone else. Hence, an individual enjoys full liberty to choose whichever path he likes and to develop his faculties in any direction that suits his natural gifts. If the leader obstructs him or obstructs the growth of his personality, he will himself be punished by God for this tyranny. That is precisely the reason why there is not the slightest trace of regimentation in the rule of the Holy Prophet and of his rightly-guided Caliphs ; and

(d) In such a society every sane and adult Muslim, male or female, is entitled to express his or her opinion, for each one of

them is the repository of the caliphate. God has made this caliphate conditional, not upon any particular standard of wealth or competence but only upon faith and good conduct. Therefore all Muslims have equal freedom to express their opinions.

### **Equilibrium Between Individualism and Collectivism**

Islam seeks to set up, on the one hand, this superlative democracy and on the other it has put an end to that individualism which militates against the health of the body politic. The relations between the individual and the society have been regulated in such a manner that neither the personality of the individual suffers any diminution, or corrosion as it does in the Communist and Fascist social system, nor is the individual allowed to exceed his bounds to such an extent as to become harmful to the community, as happens in the Western democracies. In Islam, the purpose of an individual's life is the same as that of the life of the community, namely, the execution and enforcement of Divine Law and the acquisition of God's pleasure. Moreover, Islam has, after safeguarding the rights of the individual, imposed upon him certain duties towards the community. In this way requirements of individualism and collectivism have been so well harmonised that the individual is afforded the fullest opportunity to develop his potentialities and is thus enabled to employ his developed faculties in the service of the community at large.

These are, briefly, the basic principles and essential features of the Islamic political theory.<sup>1</sup>

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1. To avoid repetition, the Editor has deleted those portions of the essay related to the problems, discussed in detail in Chapter 7—Editor.

## Chapter 5

### Political Concepts of the Qur'an

THE Qur'an is a complete code for mankind and provides guidance for man in all walks of his life. It has its own concepts of ethics, politics, economics and sociology. In the following articles an attempt has been made to present some of the basic political concepts of the Qur'an.

Maulana Maududi has written a *Tafsir* (Commentary) of the Qur'an under the title *Tafhim al-Qur'an*. This great work has been completed in six volumes and published recently. *Tafhim al-Qur'an* contains, *inter alia*, very valuable discussion of all the moral and social concepts of the Qur'an. The present article is in the nature of a logical compilation of the discussions, in so far as they relate to the political concepts. The Editor has added some notes here and there to maintain the continuity and to distinguish the editorial notes from the text, the two have been aligned differently.

—Editor.

## POLITICAL CONCEPTS OF THE QUR'AN

**T**HE chief characteristic of Islamic ideology is that it does not admit a conflict, nay, not even a significant separation between life spiritual and life mundane. It does not confine itself merely to purifying the spirit and the morals. Its domain extends to the entire gamut of life. It wants to mould individual as well as the social behaviour upon healthy pattern, so that the Kingdom of God may really be established on the earth and so that peace, contentment and well being may fill the world as water fills the oceans. The political concepts of the Qur'an spring from this unique approach to life and its concept of man's place in the universe. That is why it is necessary that before we proceed to discuss the major political concepts of the Qur'an we ought to have a clear idea of the Quranic concept of life.

### I

## THE QURANIC CONCEPT OF LIFE

There are certain basic postulates which must be understood at the very outset. These postulates are as follows :

### Basic Postulates

1. God, Who is the Creator, the Ruler and the Lord of the Universe, created man and provided him with temporary abode in that part of His vast kingdom (cosmos) which is known as the earth. He has endowed man with the faculties of thinking and understanding and has given him the power to distinguish right from wrong. Man has also been invested with freedom of will and choice and the power to use the resources of the world in any manner he likes. In short, man has been given a sort of autonomy while being appointed God's vicegerent on earth..

2. Before assigning to man the vicegerency on the earth, God made it explicitly clear to him that He alone is the Lord,

the Ruler and the Deity. As such the entire Universe and all the creatures in it (including man) must submit to Him alone. Man must not think himself totally free and should know that this earth is not his permanent abode. He has been made to live upon it only during the period of his probation and in due course he will return unto his Lord, to be judged according to the way he has utilised the period of probation. The only right course for man is to acknowledge God as the only Lord, the Sustainer and the Deity and to follow His Guidance and His precepts in all aspects of life. Man must live this life with the realisation that he is to be judged and his sole objective should be to merit the pleasure of Allah so as to emerge successful in the final test. Conduct contrary to this would lead man on to the evil path. If man follows the course of piety and godliness (which he is free to choose and follow) he will succeed in this world and in the next—in this world he will have a life of peace and contentment and in the hereafter he will qualify himself for the heaven of eternal bliss, *al-Jannah*. And if he chooses to follow the other course; i.e., that of Godlessness and evil (which he is equally free to choose and follow) his life will be one of corruption, disruption and frustration in this world and he will meet colossal misfortune in the life to come—that abode of pain and misery which is called Hell.

3. After administering this warning God sent man upon the earth and provided the very first human beings (Adam and Eve) with His Guidance in accordance with which men were to live on the earth. Thus man's life on this earth did not begin in utter darkness. The very first man was provided with a burning torch of light and guidance so that humanity may attain to its glorious destiny. The first man received revealed knowledge from God Himself. He had knowledge of the reality and was given the code of life by following which he could have a life of bliss. This code of life was Islam, *the attitude of complete submission to Allah, the Creator of man and the whole universe*. It was this religion which Adam, the first man, passed down to posterity. But later generations gradually drifted away from the right path and adopted different, erroneous ways of

life. Out of negligence they lost their original religion or out of mischief they adulterated and perverted it. They associated with God innumerable human beings, non-human objects and imaginary beings as deities and indulged in *shirk* (polytheism) of the worst type. They mixed up the pure teachings of God with strange myths, ideas and philosophies and thus produced a jumble of religions and cults. They discarded the God given principles of social ethics and collective morality, the *Shari'ah*, and deprived the human life of peace and tranquillity.

4. Although men departed from the path of truth, disregarded and perverted the *Shari'ah* and some of them even revolted against the code of Divine Guidance, yet God did not forthwith destroy them or force them to the right course. Forced conversion to the right path was not in keeping with the autonomy he had given to man. Instead, God appointed certain virtuous persons from amongst the people themselves, to discharge the responsibility of recalling and guiding men to the right path during their sojourn on the earth. These men believed in God and lived in a life of obedience to Him. He honoured them by his revelations and gave them the knowledge of reality. These men, known as prophets, were assigned the job of presenting the message of truth to the humanity asking the people to the path of the Lord.

5. These prophets were raised in all epochs, in all lands and in all nations. Their number exceeds many thousands. All of them brought the same message, all of them advocated the same way of life (*Deen*) i.e., the way which was revealed to man on the first day of his existence. All of them followed the same guidance: the guidance which was prescribed by the Lord for man at the outset of civilization. All of them stood for the same mission: they called men to the religion of Islam, asked those who accepted the Divine Guidance to live in accordance with it and organised them into a movement for the establishment of the Divine Law and for putting an end to all deviations from the Right Path. Every prophet tried to fulfil this mission in the best possible way. But a great number of people never accepted their guidance and those who accepted it, gradually

drifted astray and after a lapse of time lost the guidance or distorted it with innovations and perversions.

6. At last God raised Prophet Muhammad (peace be on him) in the land of Arabia and assigned to him the completion of the mission for which earlier prophets were ordained. The message of Muhammad (peace be on him) was for entire mankind. He presented anew the teachings of Islam in their pristine form and provided humanity once again with the Divine Guidance. He organised all those who accepted his message into one *umma* which was charged with reconstructing its own life in accordance with the teachings of Islam, with calling humanity to the path of righteousness and with establishing the Word of God on the earth. This guidance is enshrined in the Holy Qur'an which constitutes the only right code of conduct for the mankind.<sup>1</sup>

### Islamic Concept of Life

These are the basic postulates which, on the one hand, reveal God's design for providing guidance for man in this world and, on the other, define the nature, position and status of man in it. Now let us study the foundations on which the Qur'an rears man's relationship with Allah and the concept of life which naturally follows from that relationship.

The Qur'an deals with this problem on many an occasion but the entire concept of life envisaged by it is epitomised in the following verse :

"Verily Allah hath bought of the believers their lives and their properties for the price that theirs shall be the Paradise : so they fight in the way of Allah and slay and are slain. It (i.e., the promise of the Paradise) is a promise which is binding on him in the *Torah* and the *Injeel* and the *Qur'an*. And who is more faithful unto his covenant than Allah ? Rejoice then in ynn<sup>1</sup> in bargain that ye have made, for that is the supreme triumph". (9 : 111)

In the above verse the nature of the relationship which comes into existence between man and God because of *Imān*

1. Abul A'la Maududi, *Tafhim al-Qur'an*, Vol. I, Lahore, 1951, pp. 16-19.



(the act of reposing faith in Allah) has been called a 'bargain'. This means that *Imān* in Allah is not a mere metaphysical concept ; it is in the nature of a *contract* by which man barter his life and his belongings with Allah in exchange for the promise of Paradise in the life-hereafter. God, so to say, purchases a believer's life and property and promises, by way of price, the award of Paradise in the life after death. This concept of bargain has important implications and we should therefore first of all clearly understand its nature and meaning.

The fact of the nature is that each and everything in this world belongs to Allah. He is the real owner of it all. As such, man's life and riches which are part of this world, also belong to Him, because it is He Who created them and it is He Who has assigned them to each man for his use. Looking at the problem from this angle the question of any sale or purchase does not arise at all. God is the real owner, there is no question of His purchasing what is already His. Man is not their real owner, he has no title to sell them. But there is one thing which has been conferred on man and which now belongs fully to him, and that is his free will, the freedom of choice following or not following the path of Allah. As man has been endowed with free will in this respect, he is free to acknowledge or not to acknowledge the reality of things. Although this freedom of will and choice that man possesses, does not automatically make him the real owner of all the energies and resources of which he has command, nor does he acquire the title to utilise them in any way he likes, not his acknowledgment of reality or refusal to do so does in any way affect the reality as such, yet it does mean that he is free to acknowledge the sovereignty of God and His overlordship on his own life and belongings or refuse to acknowledge it and to arrogate to himself the position of independence. He may, if he likes, deem himself free from all obligations to the Lord and may think that he enjoys the rights and powers over all that he has and may use them according to his own wishes, unfettered by any higher command. This is how and where the question of

bargain comes in. This bargain does not mean that God is purchasing something which belongs to man. Its real nature is this : All creation belongs to God but he has bestowed certain things on man to be used by him as a trust from God. And man has been given the full freedom to honestly fulfil the trust or to betray it. Now God demands that man should willingly and voluntarily (and not under duress or compulsion) acknowledge those things as His which really belong to Him and should use them as a trust from God and not as his own to do with as he pleases. Thus a man who voluntarily renounces the freedom to refuse God's supremacy and instead acknowledges His overlordship, so to say, 'cells' his 'autonomy' (which too is a gift from God and not man's own) to God and gets in return God's promise of eternal bliss that is Paradise. A man who makes such a bargain is a *Mo'min* (believer) and *Imān* (belief) is the Islamic name for this contract ; and the one who chooses not to enter into this contract or after making such contract adopts a behaviour in contravention thereof amounting to breach of that contract, is a *Kafir* and the attempt to avoid or abrogate this contract is technically known as *Kufr*.

Such is the nature of the contract. Now let us briefly study its various stipulations.

1. God has put man to serious trial on two counts :—

- (a) He has left man free, but even after giving him that freedom He wishes to see whether or not man realises his true position ; whether he remains honest and steadfast and maintains loyalty and allegiance to the Lord or loses his head and revolts against his own Creator ; whether he behaves like a gentleman or tramples underfoot all values of decency and starts playing such fantastic tricks as make the angels weep.<sup>1</sup>

1. The translator <sup>has</sup> here tried to borrow the words of Shakespeare who has beautifully portrayed this attitude of man in the following couplet:  
Man, proud man.

- (b) He wants to see whether man is prepared to have such confidence in God as to offer his life and wealth in return for what is a promise that is to materialise in the next world—and whether he is prepared to surrender his autonomy and all the charms which it has, in exchange for a promise about the future.

2. It is an accepted principle of Islamic law that *Imān* consists in adherence to a certain set of doctrines and whosoever reposes faith in doctrines becomes a *Mo'min*. No one has a right to denounce such a man as non-believer or drive him out of the fold of the *ummaḥ*, save when there is explicit proof of falsity or of renunciation of the belief. This is the legal aspect of the problem. But in the eyes of the Lord, only that *Imān* is valuable which consists in complete surrender of one's will and choice to the will of Allah. It is that state of thought and action wherein man submits himself fully to Allah, renouncing all claim to his own supremacy. It is something that comes from the heart. It is an attitude of the mind and prepares man for a certain course of action. If a man recites *Kalima*, owns the contract and even performs his prayers and other acts of worship, but in his heart he regards himself as the owner and the dispenser of his physical and mental powers and of his moral and material resources, uses them to his own liking and upholds his freedom of will, then, however much the people may look upon him as *mo'min*, in the eyes of God he will be a non-believer, for he has, in fact, not really entered into the bargain which according to the Qur'an is the essence of *Imān*. If a man does not use his powers and resources in the way God has prescribed for him and instead uses them in pursuits which God has prohibited, it clearly shows that either he has not pledged his life and property to Allah or even after pledging them to Him, he falsifies the pledge by his conduct.

3. This nature of *Imān* makes the Islamic way of life distinct from, nay, the very opposite of the non-Islamic way of

Plays such fantastic tricks before heaven,

As make the angels weep. — Shakespeare, *Measure for Measure* (Isabella), Act II, Sc. II.

life. A Muslim who has real faith in Allah, makes every aspect of his life subservient to the Will of Allah. His entire life is one of obedience and surrender and he never behaves in an arrogant or an autonomous way, save in a moment of forgetfulness. And after such a lapse as soon as he becomes conscious of it he again readdresses himself to his Lord and repents of his error. Similarly a group of people or a society which consist of true Muslims can never break away from the Law of their Lord. Its political order, its social policy, its culture, its economic ideology, its legal system and its international policy must all be in tune with the Code of Guidance revealed by Allah and must, in no way, contravene it. And if ever through error any contravention is committed, it must on realising this, correct this immediately and return forthwith to the state of subservience to the Law of God. It is the way of the non-believers to feel free from God's Guidance and to behave as one's own master. Whoever adopts such a policy is, even though he may bear a name similar to that of a Muslim, treading the Satanic path and following the way of the non-believers.

4. The Will of God, which it is obligatory upon man to follow, is the one which God Himself has revealed for man's guidance. The Will of God is not to be determined by man himself. God has Himself clearly enunciated it and there is no ambiguity about it. Therefore if a person or society is honest and steadfast in its contract with Allah, it must scrupulously fashion its entire life in accordance with the Book of God and the *Sunnah* of the Prophet (peace be on him).

A little reflection will show that these stipulations are logically implicit in the bargain and it is also clear from the above discussion why the payment of the 'price' has been postponed to the life after death. Paradise is not the reward for the mere profession of the bargain, it is the reward for the faithful execution of the contract. Unless the contract is fully executed and the actual life-behaviour of the 'vendor' complies with the terms of the contract he does not become entitled to the reward. Thus the 'sale' is concluded only at the last moment of vendor's

life and as such it is natural that the reward should be given to him in the life hereafter.

There is another significant point which emerges for the study of the verse quoted above with reference to its context. In the verses preceding it, reference has been made to the people who professed *Imān* and promised a life of obedience, but when the hour of trial came they proved unequal to the task. Some neglected the call of the hour and betrayed the cause. Others played open tricks of hypocrisy and refused to sacrifice their lives and riches in the Cause of Allah. The Qur'an, after exposing these people and criticising their insincerity and hypocrisy, makes it clear that *Imān* is a contract, a form of pledge, between man and God. It does not consist in a mere profession of belief in Allah. It is an acknowledgement of the fact that Allah alone is our Lord, Sovereign and Ruler and that everything that man has, including his own life, belongs to Him and must be used in accordance with His directives. If a Muslim adopts a contrary course, he is insincere in his profession of faith. True believers are only those who have really sold their lives and all that they possess to God and who follow His dictates in all fields of activity. They stake their all in obedience to the Commands of the Lord, and do not deviate even an inch from the path of loyalty to God. Such alone are the true believers.

Some people object that the promise referred to in the verse does not occur in *Injeel* (Gospel) or *Taurat* (Torah). So far as *Injeel* is concerned we find the following verses in it :

"Blessed are they which are persecuted for righteousness' sake : for their's is the Kingdom of heaven".<sup>1</sup>

"He that findeth his life shall lose it ; and he that loseth his life for my sake shall find it".<sup>2</sup>

"And every one that hath forsaken houses, or brethren, or sisters, or father, or mother, or wife, or children, or

1. *New Testament*, St. Matthew. 5 : 10.

2. *Ibid*, St. Matthew, 10 : 39.

lands, for my name's sake, shall receive an hundredfold, and shall inherit everlasting life".<sup>1</sup>

This is what we find in the *Injeel* as it exists at present and the above verses convey more or less the very same idea as is given by the verses quoted from the Qur'an. As to the *Taurat* (the first five books of the Bible) it is correct that it does not contain a clear statement to this effect. But that is not all important, for the *Taurat* as it is today, is devoid of even clear concept of life after death, of the Day of Judgment and of the Reward and Punishment in the next world, although these have always been an inseparable part of the religion of God. It is in no way correct to think that the real *Taurat* too was devoid of these concepts. The fact is that Jews became so materialistic in their approach in the days of their decadence that they could not think of any greater reward than material and worldly prosperity. So in the rewriting of the *Taurat* they reduced the concept of Paradise and reward in the hereafter to that of material bliss of this world and regarded the promised land of Palestine as the paradise. Thus we find in the *Taurat* that:—

"Hear, O Israel : The Lord our God is one Lord ; and thou shalt love the Lord thy God with all thine heart, and with all thy soul and with all thy might".<sup>2</sup>

"Is not He thy Father that hath bought thee ? Hath He not made thee and established thee" ?<sup>3</sup>

But the reward for this devotion to the Lord, described in the *Taurat*, is that you shall become the owners of the land wherein milk and honey flow i.e., Palestine ! The reason for this is that *firstly*, the *Taurat* available to us is incomplete and many of its parts have been lost and destroyed and *secondly*, it does not consist of the unadulterated teachings of God ; instead there have been intermingled in it the teachings of God and the national traditions, racial prejudices, myths, aspirations, interpretations etc., of the Jewish people. That is why it is

1. New testament, St. Matthew, 19 : 29.

2. Old Testament, Deuteronomy, 6 : 4-5.

3. Ibid., Deuteronomy, 32 : 6.

not generally possible to distinguish the word of God from the word of man. In such a situation the absence of a clear statement in the present *Taurat* does not affect the claim of the Qur'an as to God's promise to man.<sup>1</sup>

## II

### NECESSITY FOR AN ISLAMIC STATE

The Islamic concept of life as envisaged in the Qur'an is that man should devote his entire life to the causes of Allah, Whose injunctions should be followed in all the fields of human activity. The Qur'an not only lays down principles of morality and ethics, but also gives guidance in the political, social and economic fields. It prescribes punishments for certain crimes and enunciates principles of monetary and fiscal policy. These cannot be translated into practice unless there is a State to enforce them. And herein lies the necessity of an Islamic State.

This concept is presented in the following verses of the Qur'an :—

"The adulterer and the adulteress, scourge ye each one of them (with) a hundred stripes. And let not pity for the twain withhold you from obedience to the *din* of (i.e., way of life prescribed by) Allah, if ye believe in Allah and the Last Day". (24 : 2)

A very basic point emerges from this verse. Here the criminal law of Islam has been called *Din-Allah* i.e., the religion of God. It means that religion does not merely mean prayers, and fasting and *Hajj* and *Zakat*, it also includes the law of the land and the institutions of the State. If we want to establish religion of God, the objective will not be achieved by merely establishing the institutions of *Saum* (fast) and *Salat* (prayer). We shall have to establish side by side with them the Divine Law and make the *Shari'ah* the law of the land. If the latter is not established, then even if the institutions of *Salat* etc., is in force, it will not amount to the establishment of *din*. It would

1. *Tafhim al-Qur'an*, Vol. II, pp. 265-239.

only be a partial enforcement of it and not a total one. And if instead of God-given laws some other laws are adopted, it means nothing short of rejection of the *din* as such.<sup>1</sup>

Another verse of the Qur'an which throws light on this problem is as follows :—

“Say : O my Lord ! let my entry be by the Gate of Truth and Honour ; and likewise my exit be by the Gate of Truth and Honour ; And grant me from Thy presence a ruling authority to add me”. (17 : 80)

That is, either grant power to me or grant me the assistance of any ruling authority, or state, so that I may with the force and the resources of the coercive power of the State establish virtue, eradicate evil, put an end to corruption, vulgarity and sin, set at right disruption which has spread throughout social life and administer justice according to Thy revealed law. This is what this verse means so is also clear from the interpretation placed upon it by Hasan Basri, Qatada, Ibn Jarir and Ibn Katbir. This view is further supported by the *hadith* : “Allah brings to an end through the State what He does not eradicate through the Qur'an”.

This shows that reforms which Islam wants to bring about cannot be carried out merely by sermons. Political power is essential for their achievement. And as the above prayer has been taught by none other than Allah to His own prophet, it also shows that the struggle for obtaining control over the organs of the State, when motivated by the urge to establish the *din* and the Islamic *Shari'ah* and to enforce the Islamic injunctions, is not only permissible but is positively desirable and as such obligatory. Those who regard such an endeavour as something mean and *this worldly* or characterise it as “power-seeking” are totally mistaken. If a person strives for personal glory and wants to gain power for personal ends, that is certainly to be condemned. It is un-Islamic. But if power is being sought to establish the *din* of Allah, then it is an undisputed act of Godliness and

1. Maududi, *Tafhim al-Qur'an*, Vol. III, *Sura al-Nur*, p. 343.



piety and must not be confused with power thirstiness.<sup>1</sup>

### III

#### SOVEREIGNTY OF GOD

The next and the most fundamental and most revolutionary political concept of the Qur'an is the sovereignty of God over the entire life of men. So far as the concept of the sovereignty of God over the universe is concerned, it is accepted by most of the people but what the Qur'an demands is that they must also acknowledge Him as the Sovereign in his moral, social, cultural, economic and political sphere of life.

Students of political science know how vexed the issue of sovereignty has become in the present age. It is perhaps the most-disputed issue of political science and a good many thinkers have even pleaded that the problem is so confusing that it would be better if the political theorists discard it altogether. Not only are there theoretical and logical anomalies but also the development of internationalism seems to have more or less rendered the concept of national sovereignty obsolete. The root cause of all the difficulties in respect to this question is a basic fallacy: the political philosophers have tried to place the cap of sovereignty on man a being for whom it was never intended and whom it can therefore never fit. Keeping in view the attributes of the sovereign, no human being or human organisation can really claim title to it. And when sovereignty is forced upon human beings, it results in confusion on all hands.

The Quranic concept of sovereignty is simple. God is the Creator of the Universe. He is its real Sustainer and Ruler. It is His Will that prevails in the cosmos all around. As all creation is His, His command should also be established and obeyed in man's society. He is the real Sovereign and His Will should reign supreme as the Law.

The above view of sovereignty is presented in the

1. *Tafhīm al-Qur'an*, Vol. II, p. 638.

following verses of the Holy Qur'an :

(a) Prophet Joseph (God's blessing be on him), on announcing the mission entrusted to him, declared :

"Verily I have abandoned the creed on a people who believe not in Allah and who are disbelievers in the Hereafter. And I have followed the religion of my fathers, Abraham and Isaac and Jacob. It never was for us to attribute aught as partner to Allah. This is the bounty of Allah unto us and unto mankind ; but most give not thanks. O my fellow prisoners I are diverse lords better, or Allah, the One, the Subduer!<sup>1</sup> Those whom ye worship beside Him are but names which ye have named, ye and your fathers. Allah hath revealed no sanction for them. The Authority rests with Allah alone, Who hath Commanded you that ye obey none save Him. This is the right religion, but most men know not". (12: 37-40)

This is one of the best and most eloquent arguments for *Tawheed* and contains many important points for consideration.<sup>2</sup>

(1) This, perhaps, is the first public speech of Joseph as a prophet. The earlier verses of the Qur'an, in so far as they relate to him deal with his unblemished character and his life of virtue and integrity. Now we find that he has begun his practical work as a prophet. It also seems to be the first occasion for him in Egypt to reveal his real identity, i.e., being the kin of Abraham and Isaac and Jacob. It is here that he tells the people that he is not propounding anything new—that his message is the same as that of the earlier prophets. He also tells the people that he belongs to the same international movement for *Tawheed* whose

1. The original word is *al-Zāḥḥar*, which according to Lane's 'Arabic-English Lexicon' means : The subduer of his creatures but His sovereign authority and power, and the Disposer of them as he pleaseth, with and against their will". We have rendered this word as 'the Subduer'.
2. This discussion has been abridged. Only points having a direct bearing upon the political concepts have been dealt with, the others being left out,—Editor.

leaders had been Abraham and Isaac and Jacob—mentioning only those whom the people must have known because of geographical and historical proximity.

(2) It shows that the Prophet started his work not by going into petty trivialities, but by presenting the basic postulates of Islam. In his very first discourse he clearly expounded the differences between *Tawheed* (monotheism) and *Shirk* (polytheism) and called the people to the path of *Tawheed* in a befitting manner. The message was so clear, so truthful and so well-presented that it must have gone straight to the heart of his listeners. As the listeners were slaves, they could very well understand the underlying truth of the question: "Are diverse lords better, or One Powerful Master?" They knew how difficult it was to serve more than one master. The message, in a nutshell, was that of denunciation of *shirk* in all its forms, and acknowledgement of the overlordship of one God in all fields of existence. Joseph (peace be on him) tells his listeners that gods they worship are mere names and do not possess any attribute of real lordship or sovereignty. He stressed that when they too acknowledged that the real sovereign of entire creation is Allāh Who is the Creator and Sustainer of the universe, why then avoid its natural and logical consequences. It naturally follows that He alone should and as a matter of fact does, enjoy real authority and He had not provided any sanction for the worship and obedience of any of the gods before whom they bowed. He alone is the Law-giver. Rule and authority belong to Him. All these prerogatives are exclusively His. And he has enjoined that His Command should reign supreme. Man is to worship none except Him, to obey none except Him, and to follow none except Him. He is the real sovereign and His Law must prevail<sup>1</sup>

(b) The concept of sovereignty is further explained in the following verse:

"Verily, your Lord is Allāh Who created the heavens and the earth in six Days, then mounted He the Throne. He covereth the night with the day, which is in haste to

1. *Tafhim al-Qur'an*, Vol. II, pp. 401-404.

follow it, and hath made thn sun and the moon and the stars subservient by His Command. Verily His is all creation and His is the Command (the Law). Blessed be Allāh, the Lord of the Worlds." (7 : 54)

It is difficult to precisely understand what is meant by *istawa 'alal 'arsh* (Mounted He thn Throne). It is possible that God appointed a certain place as the centre of this limitless cosmos and made it the centre—and the control-house of the universe. And it is this place, from where the universe is being governed, which has been called *'arsh* (thn Throne). It is also possible that the word has been used as the symbol of authority and suzerainty and 'to mount thn Throne' implies that after creating thn universe God took hold of the reins of power and became its Ruler and King. Whatever be the actual nature of the happening, the real import and significance of 'mounting of the Throne' is that God is not the mere Creator of the Universe, He is also its Ruler and Governor. This is a very important concept and the Qur'an wants that this point should be fully realised by man.

God is not the one who created the world and then retired.<sup>1</sup> This concept of retirement is fallacious. The Creator has not severed His connection with thn universe after having created it. He still controls it and provides for its maintenance. He controls its every aspect. All authority and all power rest in His hands. From the smallest particle of dust to the gigantic nebulae everything is subservient to His Will and obeys His Commands. Thn destiny of this entire creation is dependent upon Him. Thus the Qur'an demolishes thn very foundations of *shirk* (polytheism), atheism and self-worship. If a man does not

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1. The Hindu concept is that God retired after creating the Universe. According to *Encyclopedia Britannica*, the Hindu view is that He "having performed his legitimate part in the mundane evolution by His original creation of the Universes, has retired into the background" (Vol. XI, page 577). The philosophy of modern deism is also based on a similar misconception—*Editor*.

regard Allāh as the Creator and the Governor and thinks that God has severed His connection with the universe and now has no practical say in its running, the natural result of this concept would either be the arrogance of all authority by man to *himself* or the association and acknowledgment of other powers as deities. The Qur'an has totally banished the possibility of either.

The Qur'ān repeatedly uses the political terms like Kingship, Lord and Sovereign to explain the relationship of God with man and His other creation. It most unambiguously lays down that the real King of the heavens and of the earth is Allāh and to Him alone belongs the sovereignty over the Universe. The entire universe is one organic system which is being controlled by one Authority. Thus, whoever else claims partial or total sovereignty, whether for himself or for any group or organisation, is labouring under delusion. The only reasonable course for man is to acknowledge the Creator and the Lord as the Deity and the object of worship in the religious sense of the word and as the only Sovereign, Ruler and King in the political and social meaning of it.

The point is further clarified by the expression *lahu al-Khalq wa al-Amr* (Verily His is the Creation and His is the Command). This clearly states that God is not only the Creator but also the Commander and the Ruler. He has neither left His Creation to the mercy of others to command it as they like, nor granted any section of it the freedom and autonomy to do whatever it chooses. God is the real and virtual Ruler and exercises real control over his Kingdom. Day and night do not follow each other of their own, nor do seasons change accidentally, but it is the Will of God which regulates all this : He can make the change anywhere He likes. Everything is subservient to His Will and obeys Him implicitly. All act in the manner God Wills them to act. It is a natural demand of His being the Creator that His Will and His Law should reign supreme.<sup>1</sup>

(c) Another verse of the Qur'an also throws light on this concept :

1. *Tafhim al-Qur'an*, Vol. II, pp. 26-27.

"He unto Whom belongeth the sovereignty of the heavens and the earth. He hath taken unto Himself no son nor hath He any partner in the Sovereignty. He hath created everything and hath meted out for it a measure".

(25 : 2)

Here the word employed is *Mulk* which is used in Arabic to convey the meaning of supremacy, sovereignty and kingship. According to this verse Allāh alone is the Governor, King and Ruler of the entire universe and no one else shares even a shred of His authority. He is the absolute Sovereign. This clearly brings home to one the truth that He alone can be the Deity, because one offers his worships only to one who commands power and authority, can bless or reprove him, and change his destiny favourably or adversely. Not even a fool would be prepared to bow before one whom he knows to be devoid of all power and authority. If men would only realise that all power rests with Allāh, no one would be prepared to bow before anyone else or to obey and follow others or solicit their help and guidance. His authority alone would be acknowledged and His Commands alone would be obeyed and no such law would be followed as involves His disobedience.

To acknowledge this authority of Allāh is the kernel of the Islamic concept of Sovereignty.<sup>1</sup>

(d) The point in dispute between the prophets of Allāh and the non-believers has always been that the prophets demanded absolute obedience to Allāh and complete acknowledgment of His sovereignty in the social, political, cultural and all other fields, but those in power whether they were the heads or the elders of tribes or were the kings and monarchs, refused to forego their authority and acknowledge that of Allāh. The following verse of the Qur'an illustrates this position :

"And Moses said : My Lord is best aware of him who bringeth guidance from His presence, and whose will be the sequel of the Home (of bliss). Lo ! wrong-doers will not be successful.

1. *Tafhim al-Qur'an*, pp. 433.

"And Pharaoh said : O chiefs ! I know not that ye have a god other than me. So kindle for me a fire, O Haman to hake the mud, and set up for me a lofty tower in order that I may search the God of Moses and lo ! I deem him of the liars." (23 : 37, 38)

The Pharaoh thus claimed godhood. But he could not have by that meant that he was the Creator of the heavens and the earth. Nor any man in his senses could claim that. The Pharaoh could not even mean that he was the only object of worship, for the Egyptians worshipped a host of deities. In fact the Pharaoh himself worshipped many, a god and owned his exalted position to his being regarded as the descendant of the Sun-god.

This being the position, the Pharaoh's claim to godhood could only mean that he wanted to be obeyed as the King and the Sovereign of the people of Egypt. And from this viewpoint his position was not very dissimilar to that of the states which claim legal and political sovereignty for themselves independent of the law of God. Such states may assign the sovereign position to any one individual or to the will of the demons, but so long as they claim the laws made by them and not those laid down by Allāh and His Prophet are to reign supreme, there is no difference, in principle, between them and the Pharaohs. The nature of the claim is the same, and there is no difference between a Pharaoh who called himself *ilah* and the modern secular states which regard themselves *sovereign* in this respect.<sup>1</sup>

According to Islam sovereignty belongs to Allāh alone and He is the only Law-giver.

(c) It is as a logical consequence of this concept of sovereignty, that the political organisation of the Islamic State has been called *Khilafat* (vicegerency). Man is God's vicegerent on earth and as a vicegerent his mission in life is to carry out and establish the command of the Sovereign. According to the Qur'an :

1. *Tafhim al-Qur'an*, Vol. III, pp. 637-38.

"Thy Lord said unto the angels: Lo! I am about to place a viceroy on the earth". (2:30)

*Khalifa* means one who enjoys certain rights and powers, not in his own right but as representative and viceroy of his Lord. His authority is not inherent; it is a delegated one. He is not free to do whatever he likes, but has to act according to the directives of his Principal. If he disobeys the latter, arrogates to himself power which does not belong to him, and acts in contravention of the directives of his Sovereign, then his behaviour is not in keeping with his real position and amounts to rebellion.

The purpose of the relevant injunctions of the Qur'an is that man should realise his real status of *vicegerency*, and as such, his duty to obey his Lord, follow His instructions and establish His Will on Earth. If man does the contrary, he will fall a prey to Satan—the eternal foe of man and will go astray.<sup>1</sup>

This vicegerency is a popular vicegerency. Basically it belongs to all mankind and is not the exclusive privilege of any individual, family, tribe, class or sect. But as it implies acknowledgment of God as the Sovereign, only those who acknowledge this (i.e., Muslims), to whatever class or clan they may belong, have the right to exercise it. That is why in an Islamic State, vicegerency is confined to the Muslims alone, but is enjoyed by all of them and is not confined to any clan, class or dynasty.<sup>2</sup>

(f) As we have said earlier, it follows from the concept of the Sovereignty of God and the vicegerency of man that the latter should follow the law revealed by the Lord. This is what the Qur'an emphasises time and again,

"And say not concerning that wherein your tongues utter a lie: this is lawful, and this is unlawful that ye may invent a lie against Allāh; verily those who fabricate lie against Allāh shall not succeed". (16:116)

This verse clearly states that the authority to declare one thing to be lawful and another to be unlawful rests with Allāh

1. *Tafhīm al-Qur'an*, Vol. 1, p. 65

2. *Al-Qur'an*, 24:55.



alone and no one else enjoys even a fragment of it. This means that the authority to legislate vests in Him alone. Whoever else tries to declare or adjudge about the lawfulness or otherwise of things of his own authority is a transgressor, unless he does so on the authority of and within the limits prescribed by God.

Unhashed legislation—the act of declaring, without any let or hindrance, certain things lawful and others unlawful—has been described as ‘inventing lies against Allāh’. It has been called so because this can be the result of one of the following two things only: Either the person doing so alleges that what he is declaring lawful or unlawful without showing any basis therefor in the Book of God, has a matter of fact, been so ordained by God Himself or that God has abdicated His authority in his favour and left him free to legislate as and what he likes. Whichever of these two positions he claims for himself is a lie pure and simple and a false imputation to God.<sup>1</sup>

Not only that, at another place the Qur'an says:

“Those who do not make decisions in accordance with that which Allāh has revealed, verily they are the disbelievers.....the unjust.....the transgressors”. (5 : 44, 45, 47)

Here God warns those who do not administer their affairs in accordance with His revealed law and do not enforce it that they are (a) disbelievers (b) unjust and (c) transgressors. This means that one who disobeys the law of the Lord is guilty of three crimes *Kufr*, *Zulm* and *Fisq*. Firstly this disbelief means that he is flouting the authority of Allāh and is refusing to accept His Command—which is *Kufr*. Secondly it amounts to perpetration of injustice, for the Command of the Lord is justice, pure and complete and any deviation from it results in nothing but tyranny and injustice, or in the words of Qur'an in *Zulm*. Lastly, man being the subject of God, by disobeying the Command of the Lord, he steps out of the ambit of loyalty and obedience to Him, and this act of his is an act of transgression. And that is *Fisq*. Thus whenever a man

1. *Tafhīm al-Qur'an*, Vol. I, p. 578.

deviates from the *Shari'ah* he commits all the three crimes. It is impossible that one may disobey a directive of Allāh and not be guilty of these three crimes. The extent of guilt will, of course, depend upon the extent of the deviation and disobedial. If a man regards a command of God as **WRONG** or doubtful or outmoded and deems his own opinion or that of somebody else as *correct*, he is a *Kafir*, a *Zalim* and a *Fasiq* of the highest order and goes outside the pale of Islam. If a man acknowledges the authority of Allāh and professes his belief in it, but in the practical affairs of life does not care for His Commands, then, although he does not go outside the fold of the *ummah* his *Imān* definitely gets mixed up with *Kufr* and *Zulm* and *Fisq* and he is not a real and pure Muslim. And if there is a man who obeys God in certain fields and disobeys Him in others, then his *Imān* too gets mixed up with *Kufr* and *Zulm* and *Fisq* to the extent he disobeys the Lord.

The moral of the above verse is that the only correct, the only just, and the only prudent course for a Muslim is to follow the law of the Lord and establish it over his entire life and in that of the society.<sup>1</sup>

(g) The above is the natural dictate of the Islamic concept of sovereignty and this concept is not only the cardinal concept of the Qur'an but all the prophets of God were raised to propagate it and establish it. The message of all the prophets was one and the same: 'acknowledge God's Sovereignty and follow me'. According to the Qur'an Prophet Jesus said:

"And (I come) confirming that which was before me of Torah, so that I may allow some of what was (formerly) forbidden unto you. I come unto you with a sign from your Lord, so keep your duty to Allāh and obey me. Lo! Allāh is my Lord and your Lord, so worship Him. That is the straight path". (3: 50-51)

This verse clearly lays down that like all the prophets of God<sup>1</sup> the message of Jesus was also the same and comprised three basic points, *viz.*

1. *Tafhīm al-Qur'ān*, Vol. I, pp. 475-76.

- (i) Sovereignty belongs to Allāb alone—it is He who is to be worshipped and It is His Guidance on which the entire strcture of morality, society and cultre is to be reared.
- (ii) The Propbet is to be obeyed as the representative and the messenger of God, the Snpreme Rnler.
- (iii) The law which is to decide the legality and correctness or otherwise (*halal* and *haram*) of the things, must be the Law of the Lord. It is His *Shari'ah* alone which is to prescribe the lawful and the unlawful. None else can have any say in this respect.

Thus the mission of Moses, Jeans and Mnhammad (peace be upon them all) was one and the same. All of them stood for the same ideology. People who have ascribed different missions to different prophets are nterly wrong and make a baseless allegation. Whosoever came as the Messenger of the Lord, asked the people to desist from His disobeyal, from associating partners with Him, from devlating from His guidance, and called them to a life of unconditional obedience, loyalty and snbmission to Him.

It is unfortunate that Bible as we have it to-day does not present this mission of the Prophet Jesus (peace be on him) as precisely and as clearly as is presented in the above verse of the Qur'an. Nevertheless, even in the Bible as it exists we find references, though scattered here and there, to all the three points mentioned above.

About the first principle, relating to sovereignty and worship, the New Testament says that :

"Then saith Jesus unto him, Get thee hence, Satan ; for it is written, thou shalt worship the Lord thy God, and Him only shalt thou serve".<sup>1</sup>

And be further stated that the Will of God must prevail in the domain of human world—the field in which man has been

1. *Al-Qur'an*, 26 : 108, 126, 144, 163, 179.

2. *New Testament*, St. Matthew, 4 : 10.

given freedom and autonomy—as it prevails in the realm of nature.

“Thy Kingdom come. Thy Will be done in earth, as it is in heaven”.<sup>1</sup>

The second principle that Prophet Jesus presented himself as the Messenger and the Agent of God the Real Sovereign and asked the people to obey him in this very capacity, is supported by many verses in the New Testament. When he began to deliver his message and call the people of the Nazareth to the religion of God and his own kith and kin stood in revolt to him, he declared : So we are told on the authority of saints Matthew, Mark and Luke that a prophet is never honoured in his own country. And when conspiracies were hatched in Jerusalem to do away with him and when his friends and associates requested him to leave the place, he said that *the prophet shall not die out of Jerusalem*. And when he entered Jerusalem for the last time, his disciples were saying : “Blessed be the King that cometh in the name of the Lord” ! On that some of the Pharisees were enraged and they said to Jesus to “rebuke thy disciples”. Jesus said : “I tell you that, if these should hold their peace, the stones would immediately cry out”.<sup>2</sup> On another occasion Jesus said :

“Come unto me ye that labour and are heavy laden, and I will give you rest. Take my yoke upon you, and learn of me ;.....For my yoke is easy and my burden is light”.<sup>3</sup>

And, lastly, that Jesus wanted people to revolt against man-made law and to obey Divine Law, is upheld by the following passage in the Gospel, according to St. Matthew :

“Then came to Jesus scribes and Pharisees, which were of Jerusalem, saying, Why do thy disciples transgress the tradition of the elders ? for they wash not their hands

1. *New Testament*, St. Matthew, 6 : 10.

2. *Ibid.*, St. Luke, 19 : 38-46.

3. *Ibid.*, St. Matthew, 11 : 28-30.

when they eat bread. But he answered and said unto them, Why do ye also transgress the commandment of God by your traditions?...Thus have ye made the commandment of God of non-effect by your tradition. Ye hypocrites, well did Esauas prophecy of you saying :

"This people draweth nigh unto me with their mouth and honoureth me with their lips ; But their heart is far from me. But in vain they do worship me, Teaching for Doctrine the commandments of men".<sup>1</sup>

There is a similar passage in St. Mark <sup>2</sup>

All these references go to prove that the mission of Jesus, like that of all other prophets before him, was to preach the sovereignty of God and to establish His law on the earth.<sup>3</sup>

## THE PRINCIPLES OF LOYALTY TO THE STATE

The Qur'anic concept of sovereignty is very clear and unambiguous. It automatically follows from the concept that the centre of loyalties, in the state founded on this concept, can only be Allāh and under His sanction, His Prophet. This principle is further elucidated by the Qur'an in the following verse :

"O you who believe, obey Allāh and obey His Messenger and those from among yourselves who hold authority; then if there is any dispute between you concerning any matter, refer it to Allāh and His Messenger if you really believe in Allāh and the Last Day. This is the best course (in itself) and better as regards the result". (4 : 59)

This verse sets down the basis for the entire religious, political, social and cultural system of Islam and comprises the first principles of an Islamic constitution. It lays down the following fundamental and unalterable principles :

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1. *New Testament*, St. Matthew, 16 : 3-9.
  2. *Ibid.*, St. Mark, 7 : 5-13.
  3. *Tafhim al-Qur'an*, Vol. I, pp. 254-56.

1. The real and sole object of our obedience is Allāh, the Real Sovereign. He alone is to be obeyed in His own right. A Muslim is first and the last, the subject of God, His *'abd* (Slave). All other positions are just secondary. The centre of loyalty and obedience for a Muslim, in his individual as well as collective life, is God alone. All other loyalties must be subject to and totally within the sanction of God. None of them should, even in the minutest degree, amount to a repudiation of the loyalty we owe to Him. This idea has been expressed by the Holy Prophet in these words :

"There is no (permission for) obedience to the creature if it involves disobedience to the Creator".

2. The second fundamental basis for the Islamic Order is loyalty and obedience to the Prophet. This obedience is not demanded in its own right ; it is in fact, the practical manifestation of obedience to God. The Prophet is obeyed because he is the only authentic source through which the directives and commandments of our Lord are communicated to us. As such we can obey God only by obeying His Prophet.<sup>1</sup> There is no reliable authority other than the Prophet to make us know the Will of God and the way of His obedience. As such any form of obedience not sanctioned by the Prophet is unauthentic and therefore, untrustworthy. Thus the disobeyal of the Prophet is tantamount to disobeyal of God. The Holy Prophet enunciated this principle when he said :

"Whoever followed me followed God and whoever disobeyed me disobeyed God".

3. This third object of the Muslims' obedience the Islamic Order of life are the *ulul-amr*, i.e., the men in authority, the government. But obedience to *ulul-amr* comes only next to obedience to God and His Prophet and is subservient to both of Them. And furthermore, the *ulul-amr* must according to the very verse wherein this term occurs, be from amongst the Muslims themselves.

1. Cf. "Whoso obeys the Messenger, obeys Allāh". (*Al-Qur'an*, 4 : 80).

*Ulu'l-amr* is a term of wide connotation. It includes all those leaders of the Muslim society who control and administer its affairs, may they be leaders of thought or literature, religious divines, political leaders, administrators, judges, commanders or chiefs of social, cultural, tribal, municipal or local organisations. Thus whoever he in charge of any facet of the affairs of the Muslims, deserves to be obeyed and followed in his own sphere. It is not permitted that one should, by unnecessarily raising issues with them and creating atmosphere of strife and conflict, disturb the life of the community. The obedience to the *ulu'l-amr* is, however, subject to the following two essential conditions :

- (i) These *ulu'l-amr* should be from amongst the Muslim community.
- (ii) They should themselves be obedient to God and His Prophet and their policies and actions must conform to the letter and the spirit of the *Shari'ah*.

The Holy Prophet (peace be upon him) has expressed and elucidated this principle in many of his sayings. For instance :

- (a) "A Muslim must listen to and obey the ruler whether he approves of what is ordered or abhors it, provided he is not ordered to sin. In that case, he should neither listen nor obey".<sup>1</sup>
- (b) "There is no obedience in sin. It is only in virtue".<sup>2</sup>
- (c) "You will be governed by people some of whose acts and commands would be virtuous and some others sinful. Then whoever expresses his open disapproval over the *munkarāt* (the sinful acts) will not be held responsible for them and whosoever disapproves of them and dislikes them (at heart, although he does not express his disapproval in so many words) will also save his skin ; but whosoever approves of them and follows them would be held accountable for them".

The Companions asked : "When the days of such rulers

1. Bukhari, *Al-Sahih*.

2. Muslim, *Al-Sahih*.

come, should we not wage war against them?" The Prophet said: "No! Not as long as they offer *salat*".<sup>1</sup>

According to this *hadith* the symbol of obedience to God and to His Prophet is *salat*. If the *ulul-amr* discard it also, then they step out of the basic loyalty to God and His Prophet. And then it becomes permissible to strive to remove them.

(d) The Holy Prophet said:

"Your worst rulers are those whom you hate and who hate you and those whom you curse and who curse you". Asked the Companions: "O, the Prophet of God! If such is the situation, then should we not rise in revolt against them?" Replied the Holy Prophet: "No! Not as long as they establish prayer among you".<sup>2</sup>

This *hadith* further confirms the one mentioned in (c) above. The first *hadith* might be construed as meaning that even if the rulers offer prayer in private, they retain the right to exact loyalty. But the latter *hadith* clearly enunciates that what is required is establishment of the institution of *salat* in the collective life of the Muslims. In other words, not only they should themselves offer prayers, but should also utilise the power of the State to establish the institution of *salat* in the community. If the State does this, it retains its Islamic character. But if even this much is not there, it would mean that the State is not prepared to fulfil even the first essential requirement of Islam. In such a case it would become permissible for the Muslims to strive to change the order of things. The point has been further emphasised by the Holy Prophet in the following *hadith*:

(e) "We shall not dispute and strive against the rulers save when we see open *Kufr* in their affairs—*Kufr* in the presence of which we will have nothing to save our face before the Lord."<sup>3</sup>

1. Muslim, *Al-Sahih*.

2. *Ibid*.

3. Bukhari, *Al-Sahih*, also Muslim.



The fourth principle which too has been clearly and definitely expounded in the above verse of the Qur'ān is that in an Islamic State the Command of God and the *Sunnah* of the Prophet are the final authority. Whenever there is a dispute among the people or between the people and the rulers, it shall be referred to the Book of Allāh and the *Sunnah* of the Prophet and whatever Judgment follows therefrom should be accepted as binding on all. Thus the fundamental and distinctive characteristic of the Islamic State, which distinguishes it from a non-Islamic State, is that it accepts God and His Prophet as the final authorities. If this be lacking the State is not Islamic.

Some people ask how a modern state can look to the Qur'an and the *Sunnah* for the solution of all its problems. There are lots of problems concerning Municipalities, Railways, Posts and Telegraphs etc., about which the Qur'ān and the *Sunnah* have nothing to say. What will the State do in respect of these?

The objection is misconceived. The factor which distinguishes a Muslim from a non-Muslim is the difference of their approach to life. The non-Muslims, even those who believe in God and in Prophethood, have ceased to look to His guidance in regulating their affairs. They regard themselves free to chalk out their own solutions for their problems. A true Muslim, on the other hand, regards himself subject to the Law of God in all that he does and exercises his will to regulate his affairs only to the extent he has been permitted to do so by Allāh. He first of all turns to the guidance provided by God and His Prophet and acts according to his own lights only when and where no specific or implied guidance is available in the Qur'an and the *Sunnah*. And this action in accordance with his own lights too is based on the principle that the silence of God and His Prophet in a certain matter implies that They have left that matter to the good sense of the Muslims.

5. The verse also gives the people the right to differ with their rulers and is a character of their political freedom. In case of dispute, however, the verdict of Allāh and His Messenger is

to be taken as final, both by the rulers and the ruled. This clearly implies that there must be some institution for deciding such dispute in the light of the Qur'an and the *Sunnah*. In other words, the judiciary in an Islamic State must be independent, competent and bold enough to give an impartial verdict irrespective of the position and power of the parties to a dispute.<sup>1</sup>

## V

### THE PURPOSE OF THE STATE

Now we come to the purpose of the State. The Qur'an lays down the following directive in this respect :

"(Muslims are) those who, if We give them power in the land, establish the system of *Salat* (worship and prayers) and *Zakat* (poor-due), enjoin right and virtue and forbid wrong and evil." (22 : 41)

The above verse epitomises the purposes of the Islamic State and the basic characteristics of the rulers and administrators. This one verse alone is sufficient to give an idea of the nature and the objectives of the Islamic State. God's bounty and assistance are for those people who, when given power, act in the following way :—

- (a) In their personal lives they adopt the way of piety and obedience. Their character is free from the blemishes of sin, disobedience to God, vanity and arrogance. They behave like real gentlemen, offer prayers to their Lord, act humbly and establish the system of *Salat* in the collective life of the people.
- (b) Their wealth and resources are not wasted on sensuality and luxuries. Instead they establish the institution of *Zakat* (poor-due)—i.e., they pay their own *Zakat* and organise the institution of *Zakat* so that the wealth of the community may have an equitable distribution and the State may fulfil its welfare functions.

1. *Tafhim al-Qur'an* Vol. I, pp. 353-65.

- (c) They use the powers of the State for the eradication of evil and of sin and for the promotion and establishment of virtue and goodness.

These are the objectives of the Islamic State.<sup>1</sup>

## VI

### THE PRINCIPLES OF GOVERNMENT

In the Islamic State the Government is democratically constituted and is run with mutual consultation. The Qur'an says :—

- (a) "God has promised to those among you who believe and work righteous deeds that He will surely grant them vicegerency in the land." (24 : 55)

The verse is quite clear on the point that this vicegerency is promised to the entire Muslim community. Therefore it is a popular vicegerency and is not limited to any particular individual or group of people. Consequently, the entire community is responsible for the affairs of the State<sup>2</sup> and as such only that government can legitimately carry on the business of the State, that has been constituted by popular will and works in conformity with the powers delegated to it by the community.

- (b) "It was by the mercy of Allāh that thou hast been gentle with them (O Muḥammad), for if thou hadst been stern and hard-hearted, they would have surely dispersed from around about thee. So pardon them, and ask forgiveness for them and consult with them upon the conduct of affairs. And when thou (O Muḥammad) art resolved, then put thy trust in Allāh. Lo! Allāh loveth those who put their trust (in Him)".

(1 : 159)

- (c) "*They manage their affairs by mutual consultation.*"

(42 : 38)

It follows from the above verses that the approach of

1. *Tafḥīm al-Qur'an*, Vol. III, p. 235.

2. Based on ; *Tafḥīm al-Qur'an*, Vol. III, *Surah al-Nur*, pp. 417-420.

government towards the people should be based on love, sympathy and forgiveness. It should try to lighten their burden and provide for them the necessities as well as the comforts of life. It should look to their welfare, betterment and prosperity.

Furthermore, the government should be constituted and run in consultation with the people. Its structure must be such that the people are able to express their viewpoint. It is their will which should prevail. And this can take place only in a state that is democratic in structure and in its working.

## VII

### CONCEPT OF CITIZENSHIP

(a) Although the Islamic State is an ideological state, it confines its citizenship to only those persons who live on its territory or migrate to it. It is not an extra-territorial state. This is borne out by the following verse of the Qur'an:

"Verily those who believed and migrated and struggled hard in Allāh's way with their property and their souls, and those who gave (them) shelter and help—they are guardians of each other, and (as for) those who believe but did not migrate (to the Islamic State), you have nothing to do with their guardianship until they migrate; but if they seek help from you in the matter of faith then it is your duty to help (them) except against a folk between whom and you there is a treaty. Allāh is Seer of what ye do". (8: 72)

This verse lays down another basic principle of the Constitutional law of Islam, viz., only those persons will be under the guardianship of the Islamic State who either live in *dar al-Islam* or who migrate to it. As for those Muslims who live outside the territory of the Islamic State, it will not assume their guardianship. The relationship of Islamic brotherhood will be there, but not the legal responsibility of guardianship. If they migrate to it, then alone they will be entitled to its guardianship. If they come only as visitors and retain their citizenship

of a non-Islamic State, they will be regarded as the citizens of that non-Islamic State and will not become entitled to the guardianship of the Islamic State.

*Wilayat* is an Arabic word and it means support, assistance, protection, friendship, relationship, patronage, guardianship and the like. In its context the above quoted verse clearly denotes the relationship subsisting between the State and its citizens and among the citizens themselves. Thus it limits the political and constitutional guardianship (*i.e.*, the citizenship) to the territorial limits of the State and excludes from this guardianship those Muslims who live outside the *dar al-Islam*.

The legal consequences of this distinction are far-reaching.<sup>1</sup> This will also affect the foreign policy of the Islamic State. In the light of this verse the direct responsibility of the State is limited to the Muslims who reside in its territory and does not extend to those who do not live in it. This is what the Holy Prophet meant when he said :—

“I am not responsible for the protection of a Muslim who lives among the *Mushriks* (Polytheists).”

This is how the Islamic law has cut the gordian knot which has been at the root of many an international complication. For when a state takes upon itself the protection and guardianship of the minorities which live outside its territory, it involves itself in such complications that even consecutive wars cannot help it to wriggle out of them.

The Qur'an does not hold the Islamic State politically responsible for the protection and guardianship of those Muslims who live outside its territory. But it does emphasise the relationship of religious fraternity and takes cognizance of its implications. If Muslims are being subjected to tyranny, if genocide is being perpetrated upon them and if they invoke the help and assistance of the Islamic State on the basis of their membership of the Islamic fraternity, it is obligatory on the

1. Maududi, *Rasa'ul-afasa'il*. Vol. II, Islamic Publications Ltd., Lahore, pp. 150-184

State to go to their help and to protect them. But this function must be discharged with due regard to international commitments and moral obligations. The Islamic State is not free to behave in any manner it likes. If it is bound in an agreement with the tyrant nation, then the Islamic State cannot extend such a help as may contravene the agreement or its moral obligations without first repudiating the agreement openly.

The word which has been used for agreement in the verse is *meethāq* which is used in the sense of trust and understanding. By *meethāq* is meant any understanding which shows that one state is not at war with another. If this understanding is there, even though there be no written treaty of alliances or of friendship or a non-aggression pact or a no-war treaty the Islamic State would be deemed to have a *meethāq* with such a State.

The words used in this verse are : *bainakum wa bainahum meethāq* (between whom and you there is a treaty). This shows that the treaty between the Islamic and the non-Islamic State is not merely a treaty between two states ; it is a covenant between the two peoples as well, and the Muslim nation is also morally responsible for the treaty along with its government. The *Shari'ah* does not admit of a situation in which the Muslim people may be deemed to be absolved of the moral responsibility of the treaty entered into by their state. But the moral responsibility of the treaties of the Islamic State will devolve only on the Muslims who are citizens of the Islamic State. It will not extend or apply to those Muslims who are not citizens of the State binding itself by a treaty. That is why the Treaty of *Hudaybiyah* was not deemed to be binding on those Muslims of Mecca (e.g., *Abu Basir and Abu Jandal*) who had not yet become the citizens of the Islamic State.

Thus it follows that the State can help the other Muslim brethren outside its territory only in ways which do not contravene the treaty between the Islamic and the non-Islamic State or can help them after openly denouncing the treaty, if it so seems fit. It cannot do so in any manner contrary to

recognized standards of international ethics and morality.<sup>1</sup>

(b) As the Islamic State is an ideological state it classifies its citizens into two categories, viz. Muslims and *Zimmis*. This differentiation is essential in view of the ideological nature of the State. But it does not lead to the division of the people into different cases, nor is any group deprived of basic human rights. The Qur'an says :

"Lo ! the Pharaoh exalted himself in the earth and made its people castes. A tribe among them he oppressed, killing their sons and sparing their women. Lo ! He was of those who spread disruption and corruption (*fasaad*)."

(28 : 4)

Thus in the eyes of his government all citizens were not equal in law. All did not enjoy similar rights. Instead he adopted the policy of dividing people into groups and castes and of oppressing one group and exalting another, making one the subject and the other the overlord.

Here someone may raise an objection and say that the Islamic State too classifies its citizens into Muslims and *Zimmis* and does not give each one of them rights and privileges similar in all respects. But this objection does not hold good because the grounds of classification in an Islamic State are radically different from those on the basis of which the non-Muslim states of the past and present have been making this classification. Islam does not divide people on the basis of tribe, race, colour, language or class. It differentiates between them on the basis of a principle and an ideology. And whoever accepts the ideology which is its basic principle, its *raison d'être* governing all its actions etc. becomes entitled to the rights of full citizenship.

Further, the Islamic State confers all basic human rights on its non-Muslim citizens as well and there is no distinction as to rights and privileges between Muslims and non-Muslims in this respect. Whatever distinction is made between the two, is in the realm of political responsibilities only. Since an Islamic

1. *Tafhim al-Qur'an*, Vol. II, pp. 161-63.

State is based on an ideology, it is evident that only those who believe in that ideology can be entrusted with the responsibility of running its affairs. Only those of its people can herein bear the responsibility of policy-making who believe in the ideology which must necessarily govern its policies and programmes. And, as already explained, whoever accepts the ideology, becomes one of the governing class and whoever spurns it, steps out of their fold. Thus there is absolutely no similarity between this classification and the one made and maintained by the Pharaoh under which no one from the subject race could ever enter the fold of the ruling class, in which the subject race was deprived of all human rights and was without any guarantee of life or honour, in which all economic benefits were reserved for those who were born among the group of rulers and all avenues of progress were closed upon the rest who were subjected to servitude so that their life became an unending woe of misery and deprivation.<sup>1</sup>

## VIII

### DIRECTIVE PRINCIPLES OF STATE POLICY

Along with the basic political concepts, the Qur'an has also given some cogent directives for state policy. A careful study of these directives throws ample light on the objectives of the Islamic State. The following verses of the Qur'an are very important in this respect:

"Set not up with Allāh any other god (O man) lest thou sit down reprov'd, forsaken. Thy Lord hath decreed that :

- (1) Ye worship none save Him ;
- (2) (Ye show) kindness to the parents. If one of them or both of them attain old age with thee, say not "Fie" unto them nor repulse them, but speak unto them a gracious word. And lower unto them the wing of

1. *Tafhim al-Qur'an*, Vol. III, pp. 613-14.



- submission through mercy and kindness and say : My Lord ! Have mercy on them both as they did care for me when I was little. Your Lord is best aware of what is in your minds. If ye are righteous, then lo ! He was ever Forgiving unto those who turn unto Him ;
- (3) Give the kinsman his due, and the needy and the wayfarer :
  - (4) Squander not thy wealth in wantonness and extravagance. Lo ! the squanderers were ever brothers of the devils and the devil was ever an ingrate to the Lord ;
  - (5) But if thou turn away from them (i.e., the deserving kinsmen, the needy and the wayfarer) seeking mercy from thy Lord, for which thou hopest, then speak unto them a reasonable and kind word ;
  - (6) And let not thy hand be chained to thy neck nor open it with a complete opening, lest thou sit down rebuked, denuded ; Lo ! thy Lord enlargeth the provision for whom He Will, and straiteneth (it for whom He Will). Lo ! He was ever Knower, Seer of His subjects ;
  - (7) Slay not your children, fearing a fall to poverty, (it is) We (Who) provide for them and for you, Lo ! the slaying of them is great sin ;
  - (8) And go not near unto adultery. Lo ! it is an abomination and an evil way ;
  - (9) And slay not the life which Allāh hath forbidden save with right. Whoso is slain wrongfully, We have given power unto his heir, but let him not commit excess in slaying. Lo ! he will be helped ;
  - (10) Come not near the wealth of the orphan eave in a he-fitting manner till he comes to strength ;
  - (11) Keep the covenant. Lo ! of the covenant it will be asked ;
  - (12) Fill the measure when ye measure and weigh with a right balance ; that is neat and better in the end ;
  - (13) (O man), follow not that whereof thou hast no know-

ledge. Lo ! the hearing and the sight and the heart of each of these it will be asked ;

- (14) And walk not in earth exultant. Lo ! thou canst not rend the earth, nor canst thou stretch to the height of the hills.

The evil aspect of all these is hateful in the sight of thy Lord.' This is part of that wisdom wherewith the Lord hath revealed unto thee (O Muhammad !)". (17 : 29-39)

In the above verses the Qur'an has presented those basic principles which constitute the bedrock of the Islamic Order. The verses were revealed at a moment of historic significance, i.e., on the eve of the beginning of Madianite period. The Meccan period was coming to a close and a new chapter was going to be opened in the life of the Islamic movement. On this historic occasion the Manifesto of Islam was revealed : a manifesto which was to act as the source of policy and conduct for the new Islamic State of Madinah. It sets down the guiding principles for the moral, religious, social, economic, political and cultural reconstruction of the new state and society.

(a) The real meaning of the first principle is that none except Allāh should be worshipped and bowed before, and also that He alone and no one else should be unconditionally obeyed in all fields of life. His Command alone should be taken as the Command and His Law alone should be accepted as the Law and He alone should be acknowledged as the sole Ruler, the Sovereign and the King. The principle is not meant to be merely as a private belief and article of faith for the individual but also constitutes the very foundation of the Islamic system of life and it was on this very pillar that the Prophet (peace be upon him) set up the society and state of Islam at Madinah. The Islamic State of Madinah was founded upon an ideology and this ideology was none other than this : that Allāh is the supreme Ruler, the Sovereign and the King and it is his *Shari'ah* which constitutes for man the code of conduct and for the State the law of the land.

(b) According to the second principle the rights of the parents come first among those of all human relations and are

next only to the rights of God Himself. People must be respectful and obedient to their parents and should serve them to the best of their capacity. The moral climate of the society should be such as to make the sons and daughters respectful to the parents and not disobedient to them. It should inculcate in them the spirit of service and induce them to look after their parents in the same way as they were themselves looked after by them when they were young and in need of it. This verse is not merely in the nature of a moral precept; rather it was the foundation upon which the legal rights of the parents were later determined as is clear from the relevant portions of the books of *Hadith* and *Fiqh*. Similarly because of this injunction, an honoured position has been assigned to the parents in Islamic society and culture, and it is the duty of the community as well as of the State to take measures to protect and maintain this position. Moreover, in the light of this injunction, the principle has been laid for ever that the Islamic State will so fashion its legal, educational and administrative policy that the institution of the family is upheld and strengthened and is provided with state protection.

(c) The real import of articles 3, 4 and 5 of this Manifesto is that a man should not reserve his earning exclusively for his own needs. Rather he should maintain an unostentatious and balanced standard of life and devote his surplus wealth for helping his relatives and the needy and the destitute to meet their needs, so that the spirit of co-operation, mutual sacrifice, economic cohesion and deep regard for each other's rights may permeate the whole social climate of the history. Every person should help and assist his relatives. The rich should come to the help of the poor and assist them in meeting the ups and downs of life. Every wayfarer should always be assured of a square meal wherever he may be in a Muslim land. The people should be so imbued with the Islamic-concept of 'right' that they should always feel that in their wealth is a share for the people who live around them and if they help and assist them, they merely give them something which was the latter's 'right'

(as distinguished from 'dole' or charity).<sup>1</sup> And if a person is not in a position to assist others, then he should regard it as a cause for regret and seek the bounty of Allāh so that he may serve other people and assist them in procuring the amenities of life.

Like the first provision, these provisions of the Islamic Manifesto, too, were not meant to be mere moral tenets. The Islamic State of Madinah translated these injunctions into practice and it was in their light that a system of compulsory contributions (*sadaqāt-e-wājibah*) and of voluntary contributions (*sadaqāt-e-nāfi'ah*) was evolved, that a system of *wasīyah* (Will), *wirāsah* (Inheritance) and *awqāf* (Trusts) was devised and proper safeguards were provided for maintenance of the rights and properties of the orphans. It was made obligatory on every habitation to play host for three days, at least, to any traveller who comes to it. Moreover, every endeavour was made to infuse to the community the spirit of sacrifice, generosity, philanthropy and co-operation so much so that the people came to attach as much importance to the moral rights and responsibilities as they did to the legal rights and duties.

(d) In the 6th Item it has been suggested that people should neither become too tight-fisted nor too open-handed. Instead they should adopt a *via media* and should so expend their wealth that they neither hinder the proper and equitable circulation of wealth by acting miserly nor fritter away economic strength by adopting ways of extravagance. They should maintain a balance in their expenditure — neither hesitate to spend where necessary, nor indulge in avoidable or uncalled for expenditure. All those who, in their spendings, are motivated by hypocrisy, ostentation and exhibition of wealth, or who spend in the cause of luxury, vulgarity, or corruption or needs other than genuine, divert wealth into wrong, wasteful and unproductive channels and are guilty of abuse of God's blessings.

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1. The Qur'an says :

"In their wealth the beggar and the destitute have their due (*Haq*)".

(*Al-Qur'an*, 51 : 19) — Editor.

According to the Qur'an those who misuse their wealth on evil pursuits act as Satan's accomplices.

These injunctions too have their legal and social bearing and clearly suggest that a healthy society should, through moral education, social pressure and legal restrictions, check the waste of wealth. It was in pursuance of these injunctions that the Islamic State of Madinah legally prohibited certain forms of expenditure, stopped the flow of money into certain channels and through social reform abolished many a wrong custom which involved extravagance and over-expenditure. The State was empowered to put a stop to pronounced forms of public extravagance. Through all these measures wastage of wealth was checked.

Side by side with this, through *Zakat* and *Sadaqāt* a smashing blow was administered against miserliness. Through them the possibility of hoarding of wealth was eliminated and it was ensured that there was proper circulation of wealth in the community. Through social education people were made to understand the difference between philanthropy and extravagance, benevolence and reckless spending, miserliness and austerity and niggardliness and thrift. In the social climate so engendered the spend-thrift and the miser were looked down upon, while the philanthropic and the generous and those who maintained a balance in their life were looked upon with honour. And it is a result of this very moral and mental training that ever since then Muslim society has loved and respected the generous and philanthropic and despised the miserly and the greedy.

It is further suggested in the passages quoted above that the disparities of wealth are not necessarily unnatural. Disparities due to natural causes and not due to artificial barriers raised by man are not essentially an evil and hence it is in no way advisable to try to eliminate them by enforcing an unnatural equality. Equality of the unequals is no equality at all! Neither is it proper to change natural inequality nor to extend inequality to unnatural limits and make them inequitable.

Both the extremes are equally reprehensible. A healthy economic system should maintain justice and keep the distribution of wealth within the limits prescribed by the Lord of the universe.

It was as a result of this directive that the concept of "class struggle" could never gain ground in the economic policies of the Madinite State. Differences in income and wealth were never regarded as an evil in themselves which must at all costs be eliminated. Thus the Islamic State recognised the natural differences which are inherent in men and instead of enforcing an unnatural equality it tried to so fashion the society through moral education and legal processes that economic disparities, instead of becoming an instrument of oppression or exploitation, became agencies of the promotion of many a social, moral and economic virtues.

(e) The seventh principle gives the lie to the basis on which the movement for Birth Control and Family Planning has been rearing its head from time to time. In old times the fear of poverty led the people to resort to the killing of their offspring or to abortion, and now the method of contraception has been added to it by modern science. This seventh clause of the Islamic Manifesto directs people to totally avoid all those efforts which aim at curtailing the number of the people and instead to devote heart and soul to the constructive effort of multiplying the means of economic sustenance. According to this provision, it is one of the greatest follies of human beings that they resort to the curtailment of their numbers merely out of an imaginary fear of the insufficiency of economic resources. God says that the provision of economic resources does not lie with man, it is solely in His Hands. He made the world, He endowed it with all necessary resources, and He has been feeding those who have gone before and will feed those who are to come in future. It is He Who has taken upon Himself the feeding of His creation. History also tells us that the economic potential has increased in the countries whose population has increased and often the rate of growth of the economy has been

more rapid. Everybody who is born on this earth does not arrive just with a mouth and a stomach—he comes also endowed with *two* hands and a brain. It is foolish to think that Nature's plan is defective and that we must destroy or check human progeny to correct the situation.<sup>1</sup>

It is a result of this very teaching of the Qur'an that Birth Control has never applied much to Muslim society and has never gained currency among them.

(f) "Go not near adultery" is a command addressed to the individual and the society alike. For the individual it means that he should not only avoid adultery but should also avoid all those preliminaries which may lead to it. He should avoid all those things which become a stepping-stone to *zina* (fornication and adultery). For the society as such it means that it should not only forbid *zina* but should also eliminate the causes, incentives and auxiliaries of *zina* so that the evil should be banished root and branch. This purpose is to be achieved through proper reconstruction of the social life, through moral training, social education, legal moeures and all other effective devices. The individual and the society both must be free from the evil of *zina*.

This injunction became the source of many social laws and rules of conduct in Islam. For instance *zina* and false accusation of *zina* were made cognizable offences; *purdah* was introduced and its rules laid down, stringent steps were adopted to stop vulgarity and corruption, drinking was forbidden; and so were instrumental music, dancing and the making of human likenesses — (all the kith and kin of *zina*!); and a family law was evolved by which marriage was made easy and a simple affair and the social causes of *zina* were totally eliminated.

(g) The ninth principle forbids the slaying of human beings. This applies as much to suicide as it applies to the killing of

1. Maududi, *Islam aur Zabṭ-e-saladat* (Islam and Birth Control); Islamic Publications Ltd., 13-E, Shah Alam Market, Lahore, 1960. Those interested in the economic refutation of the plea for birth-control may see; J. D. Bernal, *World Without War*, London, 1938 and Arthur McCormac, *People, Space, Food*, London, 1960.

others. According to the Law of Islam the slaying of human life—whether of others or of one's own self—is the greatest crime and a Muslim must never ever think of it. Man has harboured the illusion that his own life belongs to him and he is entitled to put end to it. It is a misconception, pure and simple. All life belongs to Allāh and man has no right even to misuse it, much less to destroy it. God has by bestowing life and other resources on man put him on trial and he should always be prepared to face this trial to the last breath, whatever the conditions that he may have to pass through during the period of this trial. To run away from the trial is folly. And to commit this folly by means of suicide—a gruesome crime—is worst of all. When folly and crime are wedded together, nothing but ignominy in the world and worst punishment in the hereafter can result from it. Can anything be more futile than to court eternal pain and inglorious to avoid temporary misfortunes and frustrations of this world?

Taking of human life has been forbidden save with right. According to Islamic law this right is limited to five occasions, viz :

- (i) *Qisas* (Retaliation) from a murderer,
- (ii) Killing of enemies in an Islamic war,
- (iii) punishment for those who try to overthrow the Islamic way of life,
- (iv) punishment for adultery by married males or females, and
- (v) punishment for *irtidād*, i.e., high treason.

These are the five grounds on which alone is the taking of human life justified and legal and not otherwise.

It has further been said :

“We have given power unto his (deceased's) heir but let him not commit excess in slaying”.

By “Power” (*sultan*) is meant justification to demand *Qisas* (retaliatory killing). From this arises a principle of Islamic law that in a case of murder the real plaintiff is not the State but the heirs of the murdered person—and they are empowered



to forgive the murderer and to take blood-money from him instead, or forgive him altogether. The State itself does not have the right to grant pardon.

There can be many kinds of excesses in slaying and they are forbidden in Islam, e.g., to kill persons other than the murderer, to kill him by torture or by excessively painful methods, or to mutilate his body after his death; or to kill him even after taking the blood-money, and so on.

It has been said: "He will be helped", but at the time of the revelation of this verse the Islamic State had not yet come into existence it was not explained who would help him. Later on when the State was established, it was decided for all times that the punishment will be imparted by the Islamic State through its judiciary. No individual or group or clan or tribe is entitled to take the law into its own hands to avenge a murder. Only the State can do that. The duty of the murdered persons is to seek justice from the State which shall provide it in full measure.

(h) The principle adumbrated by the 10th clause was also not a mere moral precept; it inspired the Islamic State of Madinah to devise legal and administrative means to safeguard the rights of the orphans, the details of which are available in books of *Hadith* and *Fiqh*. And from it was derived the general principle that the Islamic State is responsible for the protection of the right of those citizens who cannot look after their own interests. The following *hadith* of the Holy Prophet refers to this very point and constitutes the source of great many laws in Islam:

"I am the guardian of those who have no other guardian".

(i) The 11th clause also became the corner-stone of the internal and foreign policy of the State. It too was a moral precept as well as a directive for state policy.

(j) The 12th clause presents the view that honesty is not only a good moral quality, it is also the best economic policy. It is good for this world and for the hereafter. In this world it will build up good reputation and will enable the vendor to win

the confidence of the buyer. This will automatically lead to the promotion of trade and fostering of mutual prosperity. And in the hereafter, the honest will prosper, for therein entire reward would depend upon man's honesty and his fear of God.

Like the other injunctions, this one too is not meant as a moral precept only. It has acted as a directive state-policy and it was held to be the responsibility of the Islamic State to keep an eye upon trade-practices and to see that right measures were being used. And it was from this injunction that the general rule was derived that it is a function of the Islamic State to check malpractices and exploitation in the economic field and enforce justice therein.

(k) In clause thirteen it has been said that Muslims should not base their actions on suspicion or doubt. They should always fashion their individual and social policies in the light of "reliable knowledge". This dictum too had many far-reaching effects. In the realm of ethics it came to be a principle that one should avoid casting suspicions and doubts upon others and should never make any allegation against others without proper investigation and verification. In the field of law, the principle was adopted that no action would be taken against anyone merely on the basis of suspicion. Similarly it was forbidden to arrest a person, to beat him or imprison him merely on suspicion. In foreign relations it was not permissible to take any step against another people or state without just cause; nor was it proper to give currency to rumours merely on ground of suspicion. In education those subjects were not encouraged which are not based on sound foundations and which rest on mere conjectures. And above all, it led to the eradication of all superstition in religion. Muslims were asked to form their belief on what was revealed to them by God through His Prophet and on what was taught by the latter—in other words, on surest Knowledge and not upon myth or ignorance.

(l) Lastly, Muslims are told that they should shun the ways and the manners of the arrogant and the tyrant. This precept too is meant for individual and national life alike. And it was

a result of this very injunction that the lives of the rulers, the governors and the generals of the Islamic State of Madinah were free of all artificial pomp and show which is a characteristic of lives of the arrogant and the tyrant and the decadent. They lived a humble life. Their manners were simple and straightforward. Courtesy and kindness were their ways. They behaved with the people in the best of ways: with love and sympathy and understanding. Even in war they never uttered words of pride or arrogance. And when victorious, they never tried to overwhelm others by pomp and show. This was how the Islamic society followed the above injunctions.

This was the Manifesto of the Islamic movement led by Prophet Muhammad (God's blessings be upon him) and in it were laid the directive principles of an Islamic State.<sup>1</sup>

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1. Maududi, *Tafhim al-Qur'an*, Vol. II, pp. 602-17.

## Chapter 6

### First Principles of the Islamic State

The movement for the adoption of Islamic Constitution was at its climax in the last quarter of 1952 when Maulana Maududi visited Karachi in November. He was invited by the President of the Karachi Bar Association to address a gathering of the lawyers and the intelligentsia of the metropolis. As it was a discussion forum, Maulana Maududi prefaced the discussion with a brief but comprehensive talk on the basic principles of the Islamic State and the nature and contents of Islamic Constitution. This talk was given to enlist the support of the upper intelligentsia to the cause of the movement for the establishment of an Islamic State in Pakistan. It also possesses a historic significance, for it was given at Karachi at a time when the Basic Principles Committee Report was being finalised. The Report was going to be presented before the Constituent Assembly in November 1952, but at the last hour its presentation was postponed for one month and material changes were made in its text to incorporate some of the demands of the Islamic elements. A resume of the said talk is given in the following pages.—*Editor.*

## FIRST PRINCIPLES OF THE ISLAMIC STATE

**W**E should, at the very outset, clearly understand the nature of the problem that confronts us. When we say that this country should have an Islamic Constitution, we do not mean that we possess a Constitution of the Islamic State in a written form and that the only thing that is required to be done is to enforce it. The core of the problem is that we want an unwritten constitution to be transformed into a written one.<sup>1</sup> What we term as Islamic Constitution is in reality an unwritten constitution. It is contained in certain specific sources, and it is from this that we have to evolve a written constitution in keeping with the present-day requirements of our country.

An unwritten constitution is nothing unique or strange for the world. Indeed, up to the middle of the 18th century, the structure of Governments throughout the world rested on unwritten constitutions; and even today the British Government is functioning without a written constitution. Just as if the people of Britain choose to have a written constitution instead of an unwritten one, they will have to take recourse to the various sources of their unwritten constitution, to collect material therefrom and then codify it article-wise, similar is the course that we shall have to adopt for the codification of an Islamic Constitution.

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1. All the implications of the term "written constitution" should be very clearly understood here. A "written constitution" means a document wherein all the basic principles of state organisation have been reduced into writing and which is accepted as the only authoritative document for this purpose. When a country does not possess a constitution written in a form of such a document, it is said to have an unwritten constitution, even though all the constitutional laws and practices which go to constitute the unwritten constitution of that country, may be preset in black and white.

## I

## SOURCES OF ISLAMIC CONSTITUTION

There are four sources of the unwritten Islamic Constitution :—

## 1. The Qur'an

It is the first and the primary source, containing as it does all the fundamental directives and instructions from God Himself. These directives and injunctions cover the entire gamut of man's existence. Herein are to be found not only directives relating to individual conduct but also principles regulating all the aspects of the social and cultural life of man. It has also been clearly shown therein as to why should Muslims endeavour to create and establish a state of their own.

## 2. The Sunnah

This is the second source. It shows the way in which the Holy Prophet (peace be upon him) translated the ideology of Islam in the light of Qur'anic guidance into practical shape, developed it into a positive social order and finally elevated it to a full-fledged Islamic State. These things we can know from the *Sunnah* and *Sunnah* alone. It will also guide us how to ascertain the precise sense, purport and meaning of the Qur'anic directives. In other words, the *Sunnah* is the practical application of the Qur'anic principles to the various problems of life. Therefore it contains invaluable precedents and very important material relating to the Constitutional practices and conventions.

## 3. The Conventions of Khilafat-e-Rashidah

These conventions constitute the third source of Islamic Constitution. How the Right-guided Caliphs managed the Islamic State after the passing away of the Holy Prophet (peace be upon him) is preserved in the books of *Hadith*, History and Biography which are replete with glittering precedents of that

golden era. It has been accepted in Islam from the very beginning that interpretations of the Qur'an and the *Sunnah* having the unanimous approval of all the Companions (technically known as *Ijmā'*) and the decisions of the Caliphs relating to constitutional and judicial problems accepted by the Companions, are binding on all and for all times. In other words, such interpretations and such decisions must be accepted *in toto*, because the consensus of opinion of the Companions on any matter is tantamount of an authoritative exposition of the law. Where there has been a difference of opinion among the Companions, that is a sufficient proof of the fact that two or even more interpretations are actually possible and any one of them can be preferred to the other on the basis of sound reasoning. But where there is a general consensus of opinions among them, that shows that one and only one interpretation or decision is the correct and authoritative one. The reason being that as the Companions were the direct disciples of the Holy Prophet (peace be on him) and were trained by him personally, it is simply unthinkable that even all of them combined failed to grasp the real purport of the Prophet's teachings or could be unanimous in giving a decision against the real spirit of Islam.

#### 4. The Rulings of Great Jurists

These rulings which comprise the fourth source, are the decisions of top-ranking jurists in regard to various constitutional problems of their times. They may not be conclusive on this subject, yet it cannot be gainsaid that they contain fundamentally the best guidance for a proper understanding of the spirit and principles of Islamic Constitution.

These are the four sources of our constitution. Whenever we have to reduce the Constitution of an Islamic State into writing we shall have to collect relevant material from all of them, in the same way as the people of England, were they inclined to reduce their constitution into writing, would have to refer to their Common Law, their constitutional conventions, various statutory provisions and infer a number of points from the judgments of their courts relating to constitutional problems.

## DIFFICULTIES

No doubt, all these four sources of Islamic Constitution exist in a written form. The Qur'an is a written book. The *Sunnah* and the conventions of the Caliphs too are present in detail in the books on *Hadith* and the biographical literature of early Islam. The rulings of all Jurists of Islam are also obtainable in authoritative publications. Nothing is missing, no part is vague or wanting; and yet at the very outset of our quest of reducing this unwritten constitution into a written one a host of difficulties and obstructions confront us. Before proceeding further it is necessary that we should understand the true nature of these difficulties.

### (a) Novelty of Terms

The first difficulty is linguistic. The Qur'anic terms relating to constitutional matters, as also those of *Hadith* and *Fiqh*, have long been out of use and have by now become incomprehensible even to the learned amongst us, let alone the commoners. Unfortunately, Islam has been a closed book for all practical purposes, the most of us for a long time and, consequently, these terms are no longer in vogue. There are numerous words in the Qur'ān which we read and repeat every day without ever realising that they have some constitutional import. *Sultan*, *Mulk*, *Hukm*, *Amr*, *Wilayat*, etc., may be quoted by way of example. The exact constitutional purport of these terms is understood, if at all, by a few people. When translated into other languages, they become almost lifeless or even distorted. That is why, on hearing of the constitutional concepts and directives of the Qur'an, even fairly well-read people ask in wonder as to which verses of that book relate and refer to constitution.<sup>1</sup> Their amazement or ignorance is not surprising, for, in the Qur'an they find no chapter with 'Constitution' as its title.

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1. A leading lawyer of Pakistan had even declared, in an article published in the *Daily Dawn*, Karachi, that the Qur'an cannot give a 'Constitution' and had challenged that no one can produce an article of the Constitution from the Qur'an—*Editor*.



**(b) Odd-Editing of the Ancient Juristic Literature**

The second difficulty arises from the unfamiliar method of compilation of our old literature. In the old juristic literature, the constitutional problems have not been reported under separate heads. On the contrary, the purely constitutional and the purely legal discussions are inextricably mixed up therein. Everyone knows that the consideration of constitutional problems, as a subject apart from the purely legal matters, is a recent innovation and the use of the very word 'constitution' in its current sense is comparatively modern. Problems called 'constitutional' have nevertheless been dealt with in detail by all eminent Muslim Jurists. But all their learned dissertations on this subject are to be found in the ordinary book of *Fiqh*, dispersed in different chapters and mixed up with other allied problems. For instance, one of these problems you will find dealt with in the chapter on 'Marriages', while another will be found in the chapter on 'Inheritance' and a third in the chapter on 'War' and a fourth in a chapter dealing with some other problem, and so on and so forth. Likewise, one question may have been discussed along with the problems of 'Criminal Law' while another would probably be encountered in the treatise on 'Public Finance'. Besides this, the language and the terminology used therein are so different from the terms in vogue today that unless the student possesses sufficient erudition in various branches of law and the problems arising therefrom, and is, in addition to that, a versatile scholar of Arabic (both modern and ancient), he can hardly discern where a problem of international law has been discussed cheek by jowl with a common law point or where a problem of personal law has been dealt with in the course of discussions on constitutional law. The fact, however, remains that even in the early centuries of Islam, our best brains thought over these problems and have left behind them a legacy of valuable material relating to constitutional law and practices. To edit all this material properly, after reviewing, sifting and cataloguing it and then to present it accurately to the world in modern terms is the work of great

diligence and elaborate research. And most of the Muslim scholars of the present generation, who have been for long content with the left-over of others, are hardly competent for this task. What is even more tragic, is that without knowing or trying to realise the true value of this great heritage, the present generation has developed a tendency to look down upon it.

### (c) Defects of Our Educational System

The third difficulty is due to the defective system of our education. Under this system of education those who choose the theological branch of learning, generally keep themselves utterly ignorant of such modern subjects as Political Science, Economics, Constitutional Law and the problems arising therefrom. Consequently, even though they spend most of their time in leading and teaching the texts and interpretations of the Qur'an and *Hadith* and the *Fiqh* they do not possess even an elementary understanding and grasp of current political and constitutional problems enunciated in the simplest modern terminology, let alone making a deep and scholarly study of them. Thus they remain incapable of giving any lead to the people by regarding the modern political and constitutional problems in the light of their knowledge of Islam. Instead of approaching the front of learning themselves, they await that these problems be enunciated and explained to them in the terminology that they understand.

The other class consists of those people who have acquired modern education and who are practically in full control of all branches of State organisation. This class, though quite familiar with most of the modern problems of life, actually knows very little, if at all, of the glorious heritage of Islam. Most of them are unfamiliar with even the fundamental principles and the basic directives of Islam much less that they should possess any knowledge of their necessary details and other implications. Whatever they know of Islamic constitutional law or political science or jurisprudence, they acquire it through the medium of Western education and consequently, all their knowledge of the Qur'an and the *Sunnah* is not only exceedingly

poor, sketchy and inadequate but also is indirect and sometimes third or even fourth-hand. And it is for this reason that even such of them as sincerely and genuinely long for a renaissance of Islam are hardly capable of affording guidance to others. They search for a verdict of the Qur'an on all modern problems only in the language which they can understand. This is indeed a very great difficulty and is perhaps the highest one amongst those which are hindering the framing of a truly Islamic Constitution.

#### (d) Ignorance Run Amuck

The fourth stumbling-block in our way to Islamic system of life is the claim of some people wielding influence to give rulings without requisite knowledge of Islam. And the tragedy of the matter is that this tendency is assuming alarming proportions with the passage of time. The slogan of these people is that Islam does not recognise priesthood and therefore the *Mulla* cannot be the sole interpreter of Islam. Everybody has an equal right to interpret the directives of the Qur'an and to draw inferences therefrom. There is no reason, they say, why a *Mulla's* word should be taken as being more weighty than that of a layman. Thus speak those who are conversant neither with the language of the Qur'an and the *Sunnah* nor possess any insight in Islamic traditions. None of them has seriously devoted even a day of his life to the study of Islam and its vast literature. Instead of honestly realising their weaknesses and deficiencies and making an effort to remove them, they deny the very need for acquiring knowledge and insist that they should be given a free hand to interpret Islam as they like.

Evidently, if this kind of ignorance is allowed to have its way in any one department of collective life, there would be no end to mischief. Somebody would stand up tomorrow and say that there being no "Lawyer-hood" in Islam, even the most ignorant has the same right to pronounce authoritative verdicts on points of law, even though he knows nothing about it. Then another person may stand up and say that there being no 'Engineer-hood' in Islam, therefore he has as much a right to

meddle with the Engineering problems of the country as a qualified engineer. This may be followed by a third one's assertion that there being no 'Physician-hood' in Islam, therefore everybody has an equal right to prescribe for the sick, no matter if it means having more people inside the graveyards than out of them !

I am really surprised to find even some well-read and otherwise intelligent people giving vent to such like childish ideas. Do they presume that the whole nation consists merely of ignoramuses and would applaud all such senseless assertions ? No doubt, Islam does not recognise priesthood as a class. But, have the protagonists of this slogan ever tried to understand what it implies ? It only means that Islam neither recognises the Jewish and Brahmanic principle of giving the monopoly of religious knowledge and spiritual work to a particular privileged race or tribe, nor does it uphold the Christian doctrine of the separation of the secular and the religious into two watertight compartments. Nobody can, therefore, claim in Islam to enjoy spiritual monopoly and the "*Mulla*" or the "*Alim*" is not a titular head claiming any inherent and exclusive rights of interpreting religious laws and doctrines. On the contrary, just as anybody may become a judge or a lawyer or a doctor by properly qualifying for these professions, similarly whosoever devotes his time and energy to the study of the Qur'an and the *Sunnah* and becomes well-versed in Islamic learning is entitled to speak as an expert in matters pertaining to Islam.

If there is any sense and meaning in the assertion that there is no priesthood in Islam, it is only what has been stated above. It does not and cannot mean that Islam licenses everybody to start pronouncing authoritatively regarding the Qur'an and its directives and instructions, without trying to have any insight in it. Indeed, if an empty claim to be an authority on matters secular is not acceptable anywhere, how can it be so in religious matters which pertain not only to the most important aspects of our life in this world but also to our *Imān* and the life after death ?

This fourth difficulty in our path has become the most real difficulty for the moment. For, in the case of the first three, we can hope to remove them by dint of hard work and honest labour. In fact, we have already removed them to some extent. But the solution to this last one is not so easy to find, more so because it is being wilfully used as a handle by those who happen to hold the reins of power one way or the other.

## II

### FUNDAMENTAL PROBLEMS OF POLITICAL THOUGHT

I will now discuss the fundamental problems of constitution and try to present before you briefly what guidance is available to us in this behalf from the original sources of Islam. This will help you to judge for yourselves whether Islam gives any guidance to us in the field of constitution or not and whether that guidance is merely of a recommendatory character or of a mandatory nature—so fundamentally mandatory that we cannot overlook or by-pass it, if we claim to be and wish to remain Muslims. In order to finish the discussion within the time at my disposal I propose to confine myself to the following nine basic points of an Islamic constitution :

(1) Who is the Sovereign ? Any king or body of people ? Any class, clan or the whole nation ? Or God Almighty Himself ?

(2) What are the functions and scope of an Islamic State ? To what extent can it command allegiance from its citizens and where and when the State will lose this right ?

(3) What are the powers and functions of the various organs of this state, i.e., the Executive, the Judiciary and the Legislature ? What are the rights, duties and limitations of each, and what are their relations *inter se* ?

(4) What is the real purpose of the State ? That is, what are the objectives that it will strive to achieve and what are the fundamentals of its overall policy ?

(5) How is the government of this state to be constituted?

(6) What will be the qualifications of persons considered eligible for running the government of this state?

(7) What will be the conditions of its citizenship and how will a person acquire and lose this right?

(8) What will be the fundamental rights of its citizens? and

(9) What will be the basic obligations of its citizens towards the State?

These questions are the key-points of political theory and a constitution is expected to provide clear-cut answers to them.<sup>1</sup>

1. Some of the authorities on Constitutional Law have defined it as under :

- (a) "Constitutional Law, as the term is used in England, appears to include all rules which directly or indirectly effect the distribution or exercise of the sovereign power in the State. Hence it includes (among the other things) all rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other, or which determine the mode in which the sovereign power, or the members thereof, exercise their authority. Its rules prescribe the order of succession to the throne, regulate the prerogatives of the chief magistrate, determine the form of the legislature and its mode of election. These rules also deal with Ministers, with their responsibility, with their sphere of action, define the territory over which the sovereign of the State extends and settle who are to be deemed subjects or citizens."—A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, London, 1941 (9th edition), p. 23.
- (b) The objects of the Constitution, in short, are to limit the arbitrary action of the government, to guarantee the rights of the governed, and to define the operation of the sovereign power."—C. F. Strong, *Modern Political Constitution*, London, p. 10.
- (c) "The constitution of a state is the system of laws, customs and conventions which define the composition and power of organs of the State and regulate the relations of the various State organs to one another and to the private citizen.".....Hood Phillips, *The Constitutional Law of Britain and the Commonwealth*, London, 1957 (2nd edition), p. 5.
- (d) "The term Constitution signifies the arrangement and distribution of the sovereign power in the community, or the form of the government".....George Cornwall Lewis, *Use and Abuse of Political Terms*, p. 20—Editor.

We must, therefore, try to find out Islam's answer to those questions.

### III

## ISLAMIC CONCEPT OF SOVEREIGNTY

Let us start with the first question as to who enjoys the right to sovereignty in an Islamic State. The Qur'an furnishes an unequivocal reply to this question. It says that sovereignty in all its aspects, is only for God. He alone is the Creator and the real Ruler of this universe. Therefore to Him belongs the sole right of being the sovereign over all this creation. To understand this point fully, we would be well advised to first grasp the exact purport of the word 'Sovereignty' itself.

### **The Meaning of Sovereignty**

In the terminology of Modern Political Science, this word is used in the sense of absolute overlordship or complete suzerainty. If a person or a group of persons or an institution is to be Sovereign, it would mean that the word of that person, group or institution is law. A Sovereign has the undisputed right to impose his orders on all subjects of the State and the subjects are under an absolute obligation to obey them, be it willingly or unwillingly. No outside agency, excepting his own will, imposes any limitations or restrictions on his power to rule. No subject has any absolute right against him or in contravention of his orders. Whatever rights anybody enjoys emanate from him and whatever rights he withdraws become extinct forthwith. It is a universal legal axiom that every right in law comes into existence only because the Law-Giver desires to be so. If, therefore, the Law-Giver withdraws it, its very existence is obliterated and it cannot be demanded thereafter. Laws come into existence by dint of the will of the Sovereign and place all subjects of the State under an obligation to obey them; but no law binds the Sovereign himself. In other words, he is the absolute authority, which means that, in relation to his orders, questions of good and evil and right and wrong can-

not and should not arise at all. Whatever he does, is just and nobody can question his conduct or his orders and their enforcement. His behaviour is the criterion of right and wrong and none can question it. It is thus inescapable that the sovereign should be accepted as being absolutely above all aberrations and errors, even though he may not actually be so.

Such is the nature and meaning of the concept of sovereignty as enunciated by the modern 'lawyers and jurists'.<sup>1</sup> Nothing short of this can be termed as sovereignty. This sovereignty, however, remains a mere legal supposition so long as some active paramount capable of enforcing it is not available. In the

1. "Sovereignty", is derived from the Latin word *supremus* which means supreme. The definitions of the term are varied but "it always signifies a highest governmental and legal authority of some sort," (François W. Coker, "Sovereignty," *Encyclopaedia of Social Sciences*, Vol. 14, p. 265). Jean Bodin who first developed the concept in modern political thought defined it as "*Summa in cunctis ac subditis legibusque soluta potestas*" i.e., the supreme power of the State over citizens and subjects, unrestrained by law. Grotius defined it as "the supreme political power in him whose acts are not subject to any other and whose will cannot be overridden". Blackstone conceives it to be "the supreme irresistible, absolute, uncontrolled authority in which the *jura summi imperii* reside." Jullienck defines it as that "Characteristic by virtue of which it cannot be legally bound except by its own will, or limit by any other power than itself." Burges characterises it as "original, absolute, unlimited power over the individual subject and over all associations of subjects." He calls it "the undivided and independent power to command and compel obedience." The attributes and characteristics of sovereignty are said to be permanence, exclusiveness, all-comprehensiveness, indivisibility and absoluteness. See Edward McCheaney Sait (Ed.), *Masters of Political Thought*, Vol. II, London, 1949; James Wilford Garner, *Political Science and Government*, American Book Co. & World Press (Private) Ltd., Calcutta 1958; Bryce, "The Nature of the Sovereignty." *Studies in Jurisprudence and History*, Vol. II, 1901; Harold J. Laski, *The Problem of Sovereignty*, London, 1917, and *Grammar of Politics*, London (for a critique of the concept of absolute sovereignty); Mattern, *History of Theory of Sovereignty since Rousseau*, London, 1910; Mahajan and Sethi, *Recent Political Thought*, Delhi, 1956, and Jacques Martin, "The Concept of Sovereignty," *Man and the State*, Chicago, 1951.—Editor.



language of Political Science, therefore, legal sovereignty without political sovereignty has no practical existence. Political Sovereignty thus naturally means ownership of the authority of enforcing legal sovereignty.

The questions that now arise are : Does such sovereignty really exist within the bounds of humanity ? If so, where ? And who can be construed and treated as being invested with it ?

Is there any monarchical system where the monarch possesses all these attributes of sovereignty today, or has ever possessed them in the past, or can be expected to possess them in the future ? We may take the case of any of the most powerful monarchs and analyse the myth of his sovereignty only to find that all the authority enjoyed by him was in practice always limited by a number of external factors which were beyond his control.

If not in monarchy, can we name any democracy which might be regarded as being fully sovereign in the real sense of the term ? Here again the reply must be in the negative. For it will be found on close analysis that, behind all the parade of absolute power, there are a number of factors variously qualifying and restraining it and which are beyond the control of the so called "sovereign".<sup>1</sup>

It is exactly for this reason that whenever the experts of Political Science, imbued with this ideological sense of sovereignty, had endeavoured to locate the possessor of such sovereignty in human society, they have invariably failed. For they

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1. "But in the political sphere, and with respect to men or agencies, in charge of guiding people towards their earthly destinies, there is no valid use of Sovereignty...If the State is accountable and subject to the supervision, how can it be sovereign ? What can possibly be the concept of a sovereignty liable to supervision and accountable ? Clearly, the State is not sovereign. Nor are the people. Nor do they exercise a power without accountability...the power they exercise, either by mass reflexes and extra-legal means or through regular channels of a truly democratic society is in no way a power without accountability.".....Jacques Martin, *Man and the State*, Chicago, 1955, pp. 50-53...Editor.

can find nobody of the size whom this cap would fit—that is, nobody from amongst the human beings. Even in the entire gamut of creation, there is no creature who can rightly claim to possess all the attributes of sovereignty. The Qur'an stresses this very truth when it says repeatedly that sovereignty belongs to God and God alone. He is Omnipotent, *i.e.*,

He can whatever He likes ;<sup>1</sup>

He has to refer to none and to render account to none ;<sup>2</sup>

He is the source and fount of all authority ;<sup>3</sup>

He is the only one whose authority and power nothing can limit or restrain ;<sup>4</sup> and

He alone is above all aberration and error.<sup>5</sup>

Secondly, even if we close our eyes to this truth and invest somebody other than God with this sovereign status, would it really become a human being to be so invested that his mere word should be law, that there should be no right in contravention of or in contradiction to his will, that he should have to be implicitly and explicitly obeyed, and that no question of right or wrong, virtue or vice, should be possible to be raised in respect of his words or wishes.

Whoever actually enjoys these attributes, whether an individual or an institution or a people, the question will inevitably be asked : what justification is there for the investment of those powers and for that sovereign authority ? The most that can be said in reply to this would be that a general consensus of opinion justifies such a course. But, are we prepared to accept such a contention ? Suppose a person willingly auctions himself. Does the purchaser really become his owner ? If it is not so, we may well ask : how can then mere acceptance by the people of such an investment justify this alleged sovereign status ? The Qur'an unravels this knot by declaring that no

1. *Al-Qur'an*, 11 : 107.

2. *Ibid.*, 21 : 23.

3. *Ibid.*, 23 : 83.

4. *Ibid.*, 23 : 83.

5. *Ibid.*, 59 : 23-24.

creature has the right to impose his will or words on other creatures and that this is a right exclusively reserved for God Himself and is inherent in Him by reason of His being the Creator. It says :

"Verily, His is the Creation and His is the Law". (7 : 54)

This is such a rational and convincing position that none can reasonably contest it, and surely not those who accept God as the Creator of the universe.

The third point which automatically arises is that if we invest some human agency with this superhuman mantle of sovereignty, overlooking the inherent shortcomings, would it be of any service or advantage to humanity ? No human being, whether invested with this status individually or collectively, can easily digest such a huge dose of sovereignty, wherein he has unlimited powers to enforce his will over large numbers of people. Such authority, whenever and wherever invested in a human agency, has invariably resulted in injustice and maladministration of the most contagious type.

Evil is inherent in the nature of such a system and whenever humanity has adopted it, evil has inescapably raised its head. For, he who is really not sovereign, and has no right to be sovereign, whenever made so artificially cannot but use his powers unjustly. This is exactly what the Qur'an enunciates in these words :

"And those who do not make their decisions in accordance with that revealed by Allāh, are (in fact) the unjust". (5 : 45)

#### God's *de jure* Sovereignty

That is why it has been definitely laid down in Islam that *de jure* sovereignty also belongs to Allāh whose *de facto* sovereignty is inherent and manifest in the working of the entire universe and Who enjoys exclusively the sovereign prerogative over all creation. The Qur'an repeatedly stresses it with an increasing emphasis. At one place it says :

"The Command is for none but God : He hath commanded that ye obey none but Him : that is the right path." (12 : 40)

At another place it enjoins :

"Follow the revelation sent unto you from your Lord, and do not follow the (so-called) guardians other than Him." (7 : 3)

At a third place, any deviation from this position of acceptance of his *de jure* sovereignty has been described as plain and unadulterated *Kufr* (i.e., disbelief) ;

"And those who do not make their decisions in accordance with that revealed by Allāh, are (in fact) the disbelievers." (5 : 44)

These injunctions clearly show that the acceptance and admission of the *de jure* sovereignty of God is *Islam* and its denial is *Kufr*.

### The Role of the Prophets

The Prophets alone are the true agencies through whom the directives and the commands of the Almighty are communicated to mankind. That is why it is ordained in Islam that the Prophets must be obeyed implicitly and without any 'ifs' and 'buts'. You will note in the Qur'an that whosoever has claimed to have come from God as His Messenger, has unequivocally proclaimed; "Fear God and obey me." (26 : 108, 126, 144, 163, 179).

The Qur'an enunciates this as definite principle in these words :

"Each and every messenger who was sent by Us was sent for the sole purpose that he should be obeyed under the sanction of Allāh". (4 : 64)

And again :

"He who obeys the Messenger obeys God." (4 : 80)

The stress on this fact is so definite that the Qur'an refuses to recognise him as a Muslim who declines to accept the Prophet as the final adjudicating authority. Thus it says :

"Nay, (O Muhammad ! ) by the Lord, they will not believe until they accept you as the final arbiter in all their disputes and submit to your decision whole-heartedly without any heartache." (4 : 65)

Again, the Qur'an prescribes thus :

"It is not for a believing man or a believing woman to have a say in any affair when it has been decided by Allāh and His Messenger ; and whoever disobeys Allāh and His Messenger, he goes astray manifestly." (33 : 36)

Viewed against this background, there is no room to doubt the premise that in Islam *de jure* sovereignty exclusively and solely belongs to God and under His aegis to His Prophet (peace be on him). As a matter of fact the Prophet (peace be on him) is the physical manifestation of God's *de jure* sovereignty on earth and His mouthpiece for this purpose.

### The Position of the State

After this interpretation of the basic constitutional problem of sovereignty, the only question that remains to be answered is as to who enjoys the political sovereignty in this set-up ? Unhesitatingly the reply would be that political sovereignty too, as a matter of fact, belongs to God and God alone. Whatever human agency is constituted to enforce the political system of Islam in a state, will not possess real sovereignty in the legal and political sense of the term, because not only that it does not possess *de jure* sovereignty but also that its powers are limited and circumscribed by a supreme law which it can neither alter nor interfere with. The true position of this agency has been described by the Qur'an itself. The terms used by the Qur'an for this agency is "*Khilafat*" which means that such an agency is not sovereign in itself but is the vicegerent of the *de jure* and the *de facto* sovereign viz., God Almighty.

### The Doctrine of Democratic Khilafat

By the word "vicegerency" your mind should not turn towards the Divine Right of Kings, or to Papal authority. According to the Qur'an the vicegerency of God is not the exclusive birthright of any individual or clan or class of people: it is the collective right of all those who accept and admit God's absolute sovereignty over themselves and adopt the Divine Code, conveyed through the Prophet, as the law above all laws and regulations. It says :

"Allāh has promised such of you as have become believers and done good deeds that He will most surely make them His vicegerent in the earth". (24 : 55)

This concept of life makes the Islamic *Khilafat* a democracy, which in essence and fundamentals is the antithesis of the Theocratic, the Monarchical and the Papal form of Government, as also of the present-day Western Secular Democracy. For, according to the modern Western concepts, democracy is that philosophy of political organisation in which it is presumed that the people possess absolute sovereignty. On the other hand, what we Muslims call democracy is a system wherein the people enjoy only the right of *Khilafat* or vicegerency of God Who alone is the Sovereign. In Western Secular Democracy, the Government is established or changed by the exercise of the will of the common voters. Our democracy also envisages the same ; but the difference lies in the fact that whereas in the Western system a democratic state enjoys the right of absolute authority, in our democracy the *Khilafat* is bound to keep within the limits prescribed by the Divine Code.

## IV

### THIS STATE : ITS ORGANS AND ACTIVITIES

The foregoing discussion over the Islamic concept of *Khilafat* automatically brings us to the question : what is the scope of activities of an Islamic State and the nature of limitations imposed thereon ? And the answer is that as this State is a vicegerent of God and accepts His *de jure* sovereignty, the scope of its activities will naturally be restricted within the limits ordained by the Almighty Himself. This means that the State can act only within the framework of the limitations and is not empowered to infringe or overstep them. This is not only an inference deduced from the acceptance of God's sovereignty but the Qur'an emphasises it directly also and warns repeatedly in clear words :

"These are the limits ordained by God ; so do not transgress them.

If any do transgress the limits ordained by God, such persons are the unjust." (2 : 229)

The positive and comprehensive principle which the Qur'an lays down in this respect is :

"O you who believe, obey Allāh and obey His Messenger and those from among yourselves who hold authority ; then if there is any dispute between you concerning any matter, refer it to Allāh and His Messenger, if you (really) believe in Allāh and the Last Day. This is the best course (in itself) and better as regards the result." (4 : 59)

According to the above injunction, obedience to the State is subject to the obedience to God and His Prophet and not independent of it ; which clearly means that on insisting to violate the commands of God and the limitations prescribed by the Prophet (peace be on him), the State loses the right of claiming obedience from the people. This very truth has been explained by the Prophet in these words :

"There is no obedience for him who disobeys God."<sup>1</sup>

"There is no obedience to any creature if it involves disobedience to the Creator."<sup>2</sup>

The other principle which follows from the above injunction of the Qur'an is that whatever dispute and difference of opinion may arise in the Muslim Society, be it between individuals or groups, or between the people and the State, or amongst the various organs and departments of the State, it should be referred to that fundamental Law which God and His Prophets has given to us. Thus the very nature of this principle demands that there should be an institution in the State which should undertake to adjudicate in strict accordance with the Book of God and the *Sunnah* of the Prophet.

Legislature, Executive and the Judiciary

Now we come to the fourth question : What are the powers

1. Tibrani.

2. *Sharh al-Sunnah* : Mishkat No. 3515.

and functions of the various organs of the State and what are their respective fields of action? Let us discuss this in little detail.

### Function of the Legislature

The Legislature is what in the old terminology of *Fiqh* was known as the "Body which resolves and prescribes" (*Ahl al-Hal wa al-'Aqd*). It is quite clear that a State established on the basis of God's *de jure* sovereignty cannot legislate in contravention of the Qur'an and the *Sunnah* even if the consensus of opinion of its people demands it. I have just related the Qur'anic injunction which lays down that where Allāh and His Prophet have given a ruling in a matter, no Muslim has any right to decide it on the basis of his own opinion<sup>1</sup> and that those who do not decide in accordance with the Divine Code, are Unbelievers.<sup>2</sup> It automatically follows from the injunctions, that it is beyond the purview of any legislature of an Islamic State to legislate in contravention of the Directives of God and His Prophet, and all such pieces of legislation, even though approved by the Legislature would *ipso facto* be considered *ultra vires* of the Constitution.

One may pertinently ask here that is this the state of affairs in an Islamic State? The reply is that in spite of this limitation the Legislature in an Islamic State has a number of functions to perform :

- (i) Where the explicit directives of God and His Prophet are available, although the legislature cannot alter or amend them, yet the legislature alone will be competent to enact them in the shape of sections, devise relevant definitions and details and make rules and regulations for the purpose of enforcing them.
- (ii) Where the directives of the Qur'an and the *Sunnah* are capable of more than one interpretation, the legislature

1. *Al-Qur'an*, 33 : 36.

2. *Ibid.*, 5 : 44



would decide which of these interpretations should be placed on the Statute Book. To this end, it is indispensable that the legislature should consist of a body of such learned men who have the ability and the capacity to interpret Qur'anic injunctions and who in giving decisions, would not take liberties with the spirit or the letter of the *Shari'ah*. (This point really falls under the purview of Elections). Fundamentally, it will have to be accepted that for the purposes of legislation, a legislature has the authority to accord preference to one or the other of the various interpretations and to enact the one preferred by it into law, provided of course that it is only an interpretation and not a perversion and camouflaged deviation from the law.

- (iii) Wherever there is no explicit provision in the Qur'an or the *Sunnah*, the function of the legislature would be to enact laws relating to the same, of course always keeping in view the general spirit of Islam, and where previously enacted laws are present in the books of *Fiqh*, to adopt any one of them.
- (iv) Wherever and in whatever matters even basic guidance is not available from the Qur'an or the *Sunnah*, or the conventions of the Righteous Caliphs, it would be taken to mean that God has left us free to legislate on those points according to our best lights. In such cases, therefore, the legislation can formulate laws without restriction, provided such legislation is not in contravention of the letter and the spirit of the *Shari'ah*—the principle herein being that whatever has not been disallowed is allowed.

We have deduced these four functions from the Qur'an, the *Sunnah*, the usages of *Khilafat-e-Rashidah* and the opinions and rulings of eminent jurists of Islam. If need be, I can quote their sources but I think that whosoever has grasped fully the fundamental principles of the Islamic State, can also realise by mere commonsense that in a state of this character, these should

constitute the functions of the legislature.

### Function of the Executive

We now come to the Executive. In an Islamic State, the real purpose of the Executive is to enforce the directives of God conveyed through the Qur'an and the *Sunnah* and to bring about a society ready to accept and adopt these directives for practical application in its life. It is this characteristic of the Executive of a Muslim state which distinguishes it from the executive of a non-Muslim state. The words *Ulul-Amr* and *Umara'* have been used for the Executive in the Qur'an and the *Hadith* respectively, which enjoin obedience to it on the condition that it obeys God and His Prophet (peace be on him) and avoids the path of sin and transgression.

The Qur'an is explicit in this connection when it says :

"And obey not a person whose heart We have permitted to become unmindful of Our remembrance, one who is following the dictates of his own desires and his case is that in which due limits are transgressed." (18 : 28)

And again :

"Obey not those who overstep the limits (We have set) and create trouble on the earth, and have no tendency to reform themselves." (26 : 151, 152)

The Holy Prophet has also repeatedly stressed it very clearly and emphatically. He says :

- (i) "Even if a defaced alaye is made your *Amir*, listen to him and obey him as long as he leads you in accordance with the Book of God".<sup>1</sup>
- (ii) "Obedience is obligatory on every Muslim, whether he likes the command or not, unless he is ordered to commit sin,—in which case the obligation lapses automatically".<sup>2</sup>

1. Muslim, *al-Sahih*.

2. *Muttafaq 'Alaih* i.e., Both the authentic books of *hadith*, Bukhari and Muslim quote it.—Editor.

- (iii) "There is no obedience in an act of sin. Obedience is obligatory only in virtue".<sup>1</sup>
- (iv) "Whosoever innovates anything contrary to the spirit of this order of Ours, is everlastingly cursed".<sup>2</sup>
- (v) "Whosoever honours and reveres an innovator, helps in bringing down the edifice of Islam".<sup>3</sup>

No doubt can exist, after these clear directives, as to the exact nature of the functional limits of the executive and the administrative powers in Islam.

### Function of the Judiciary

The scope of the Judiciary (which in the terminology of Islamic Jurisprudence is called *Qada*) also becomes well prescribed by the acceptance of the *de jure* sovereignty of God Almighty. When Islam established its state in accordance with its eternal principles, the Prophet himself was the first judge of that state, and he performed that function in strict accordance with the Law of God. Those who succeeded him, had no alternative but to base their decisions on the Law of God as transmitted to them through the Prophet.

In the Qur'an one full section of the fifth chapter, *Al-Mā'idah*, deals specifically with this very subject.<sup>4</sup> There the narration begins with the history of Israel, going next to the Christians, and finally refers to the Muslims. We have been told that God revealed the *Torah* to Moses, after which all the Israelite Prophets and the Jewish Rabbis followed it as the Code of Law in all their affairs, settling the disputes of the people in accordance with it.<sup>5</sup> Afterwards came Jesus with a

1. *Muttafaq 'Alaih* i.e., Both the authentic books of *hadith*, Bukhari and Muslim quote it.—Editor.

2. *Ibid.*

3. Al-Balhaqi, *Sho'ab al-Iman*.

4. *Al-Qur'an*, 5 : 44-50.

5. One finds the following reference in the Old Testament : "If they speak not according to this word, it is because there is no light in them" (*Isaiah*, 8 : 20) and "cursed be that confirmeth not all words of this law to do them." (*Deuteronomy* : The Fifth Book of Moses, 27 : 26)—Editor.

fresh Revelation, and the Qur'an tells us that his followers too were ordained to decide their affairs in accordance with that revelation. Then comes the reference to the Holy Prophet (peace be upon him). Addressing him directly God Almighty says :

"So judge between them, by that which Allāh hath revealed, and follow not their desires away from the truth that has come unto thee". (5 : 48)

The discourse finally ends with these words :

"Is it the judgment of the time of Ignorance that they are seeking ? Who is better than Allāh for judgment for a people who have certainty (in their belief" ?). (5 : 50)

During the course of his peroration, it has been stated with emphasis that those who do not adjudicate in accordance with the Divine Code, are not believers and they are unjust and rebels.

After this, it need hardly be stressed that the Courts of Law in an Islamic State are established for the purpose of enforcing the Divine Code and not to violate it as they are doing at present in almost all the Muslim States.

### **Relations among the Different Organs of the State**

The only question that now remains to be discussed about the various organs of the State is, In what form are these organs of the Islamic State — the legislature, the executive and the judiciary — related to one another ? There are no clear-cut instructions on this point. But the conventions of the Prophet's period and of the period of the Righteous Caliphate afford us all the necessary guidance. From these conventions we learn that the Head of an Islamic State is, as such, the supreme head of all these three different organs. The Prophet enjoyed the same status and this position was maintained by all the Righteous Caliphs.

But under the Head of the State the three organs functioned separately and independently of one another. The body called "*Ahl al-Hal wa al-'Aqd*" whose function it was to advise the Head of the State in matters of law, administration and state-policy was a separate entity. Then there were the executive

officers who had no say in judicial matters which were dealt separately and independently by the Judges (*Qadis*).

In all important matters of the State, such as formulating a policy or giving a ruling in some intricate administrative or legal problem, the Caliphs invariably consulted the *Ahl al-Hal wa al-'Aqd* and as soon as the requisite measure of agreement was reached, the work of this body was over.

Executive officers worked directly under the Caliphs. They appointed them to carry out the administration under their direct supervision and guidance.

The *Qadis* were also directly appointed by them. But the Caliphs could not ordinarily terminate their services nor influence their decisions, so much so that if in their personal capacity or in their capacity as the executive head, anybody brought a suit against the Caliphs, they had to appear and plead their cases before the *Qadi* like any commoner.

We fail to encounter even a single instance where the same person was simultaneously a *Qadi* and a Collector of the same area : or where any Collector or Governor or even the Head of the State interfered with a judicial decision. Nobody, not even any of the most important dignitaries of the State, was exempt from appearing before the *Qadi* for pleading in his own civil or criminal case.

We can amend or alter the details of this set-up according to our existing requirements. But the fundamental principles we will have to keep intact. For instance, we can reconsider the powers of the Head of the State and alter them as much as necessary. It is evident that at present we can hardly expect to have a Head of the State of the same moral calibre and spiritual standard as the Righteous Caliphs. We can, therefore, consider and restrict his administrative powers in order to safeguard against dictatorial tendencies. We may also restrain him from hearing and deciding cases, so that he may have no opportunity

to obstruct the course of justice.<sup>1</sup>

Likewise we make some other changes also in this set-up, as for instance :

(1) We may make fresh rules and regulations to suit our present needs for the election of the Head of the State and may also enact bye-laws for conducting the business of the legislature.

(2) We may specify and fix the powers and the status of the various courts.

Two questions may be asked at this stage. Firstly, whether there is room in Islam for the Judiciary to reject or to restrict the powers of the legislature in respect of enacting law in contravention of the Qur'an and the *Sunnah*. I know of no specific ruling on this question, but the conventions established during the reign of the righteous Caliphs go to show that the Judiciary did not enjoy or exercise such powers at that time. At least, there is no instance of any *Qadi* taking such an action. But here again the reason, in my opinion, is that the members of the legislature at that time had a very deep and true insight in the Qur'an and the *Sunnah* and almost all the Caliphs too were the most reliable persons in all respects. Under them, therefore,

1. On this point, a listener asked as to what was the source and authority for this opinion. The speaker replied that he derived support for this argument from the fact that during the period of the Righteous Caliphs, the Executive and the Judiciary were entirely separate and even in the person of the Head of the State these two branches of the Government were amalgamated not by virtue of any explicit injunction of the Qur'an or the *Sunnah* but by reason of people's absolute faith in the integrity, honesty and devotion to God and His Prophet of these persons and because of the assurance that they would never permit executive exigencies to influence their judgments and decisions as a judge. The people had so much faith in the Caliphs that they positively wanted them to be the "courts of last appeal" in order to be sure that even if justice was denied to them elsewhere, it would ultimately be available to them from there. If we have no longer amongst us personalities worthy of such reliance and faith, we certainly are not compelled by any injunction of the Qur'an and the *Sunnah* to keep the two important positions of the Chief Justice and the Highest Executive amalgamated in the person of the Head of the State.

there was no real danger of any such legislation taking place which was contrary to the spirit of the Qur'ān and the *Sunnah*. Even today, if we could ensure that no legislature will enact laws in contravention of the spirit of the Qur'ān and the *Sunnah*, the Judiciary need not have the authority to reject the decisions of the legislature. But if it cannot be so, then the only satisfactory course would be to give the Judiciary power to declare void and *ultra vires* of the constitution all laws and legislations enacted in contravention of the Qur'ān and the *Sunnah*.<sup>1</sup>

The other question that may be asked is : What, in Islam, is the correct position of the legislature? It is only an advisory body for the Head of the State, whose advice could be accepted or rejected by him at his discretion, or, is the Head of the State bound to accept their unanimous or majority recommendations? In this respect, the Qur'ān prescribes thus :

• "They manage their affairs by mutual consultation". (42:38)

Addressing the Prophet as the Head of the State, the Qur'ān ordains thus :

"Consult them in the conduct of affairs. And when thou art resolved, then put thy trust in Allāh." (3 : 159)

These two verses make consultation compulsory and also direct the Head of the State that when, after mutual consultations, a decision has been taken by him, he should enforce it with determination, having full faith in God. However, even this does not furnish a clear reply to our query, and I have been unable to discover any definite ruling on this point in the books of *Hadīth* either. It is the convention of the Caliphs and the judgment of the eminent Jurists of Islam that finally guide us to the conclusion that the *de facto* responsibility of all administration rests with the Head of the State. And the Head of the State, although obliged to consult his advisers (i.e., the legislature), yet is under no obligation to sanction, follow or adopt their unanimous or even majority verdict or opinion. In other

1. This stand has also been endorsed by all the leading "Ulama of Pakistan, See Appendix II.—Editor.

words, he can always exercise his "veto".

But this, when expressed in that precise form, can cause extensive misunderstanding because in modern society, people try to interpret these things with reference to present-day environments, ignoring entirely the background attending the establishment of the conventions. In the period of the Righteous Caliph, persons who were acting as advisers were not the leaders or members of separate organized parties, nor were they hemmed in by parliamentary procedures which is a feature of the modern parliamentary system. They did not come fore-armed with policies and programmes drawn up in advance at party meetings. In their case, whenever asked to assemble and advice, they came with unbiased hearts and open minds and in their individual capacity, and the Caliphs themselves attended the sitting with them. The problem was freely discussed and opinions both for and against were fearlessly given. In the end, the Caliph weighed all the arguments and exercised his own judgment, after which he gave his final verdict,—a *verdict which was generally such that the entire assembly accepted it*. Seldom did it happen that someone refused to be converted to it; but even so, he would respect it, because it came from the Caliph. In practice, however, despite their disagreement, they used to accept his final verdict without mental reservation and followed that whole-heartedly.

During the whole period of the *Khilafat-e-Rashidah* there is not a single instance where the differences of the advisers could force a voting; and there are only two instances where a Caliph ignored the unanimous opinion of his advisers and decided to act against it on his own. One was the case of permitting Uco-mah to proceed on his military campaign, and the other was the matter of waging war against the "apostatates". But even in those two cases, the basis on which the Companions ungrudgingly accepted the decisions of the Caliph was not so much the right of veto of the Caliph, whereby they would be compelled to accept it, but the fact that the Companions had absolute faith in his deep Islamic insight and wisdom. Hence, when they observed him preferring his own individual opinion of his advisers



mainly in the interests of the State, they reconciled themselves to his opinion with very good grace. And not only that. Afterwards they freely admitted that his opinion was certainly the better one and that had he not been so firm, immense harm would have been done to Islam at that early stage. It is now, an undeniable fact of Islamic history that Caliph 'Umar who in the beginning was opposed to the opinion of Caliph Abu Bakr in the matter of the "apostates", openly accepted his error of judgment later on and declared that God Almighty had endowed the first Caliph with better insight and judgment and that whatever he had decided was really the right course.

We can judge from these cases how the system of veto developed in Islam and in what environment were these precedents established. If, therefore, the method of consultation is observed in its true spirit today also and the character of "the people who are consulted" is similar to that which existed in the days of the Caliphs, undoubtedly there would be no better line of action than the one adopted then. Following it to its logical conclusion, however, we can say that, in a consultative body of this kind, if the Head of the State and his advisers stick to their own individual opinions and neither of them is prepared to recede in favour of the other, recourse may then be had to referendum after which the one whose opinion is rejected by the people should resign. But so long as it is not possible in our country, to create a consultative body of that calibre and to foster that spirit and that mentality, there is no other alternative but to restrict and to subordinate the executive to the majority decisions of the legislature.

### **The Purpose of the State**

We now come to a very important point: What are the fundamental objects for which Islam advocates the establishment of an Islamic State? These objects, as defined and explained in the Qur'an and the *Sunnah*, are as follows:

The Qur'an says:

"Certainly We sent our Messengers with clear proofs, and sent down with them the Book and the Balance, so

that people may conduct themselves with equity". (47 : 25)  
At another place it has been said :

"(Muslims are) those who, if We give them power in the land, establish the system of *Salāt* (worship) and *Zakat* (poor-due) and enjoin virtue and forbid evil". (22 : 41)

The Holy Prophet (peace be on him) said :

"Allāh brings to an end through the State what He does not eradicate with the Qur'an"<sup>1</sup>.

In other words, the evils which are not eradicated through the preachings of the Qur'ān need the coercive power of the State to eradicate them.

This means that the main objects of an Islamic State or to enforce and implement with all the resources of its organised power that reformatory programme which Islam has given for the betterment of mankind. Mere establishment of peace, mere protection of national frontiers, mere endeavour to raise the standard of living of the common man do not form its ultimate goal, nor do they constitute the characteristics which distinguish the Islamic State from the non-Islamic states. Its distinction lies in the fact that it has to encourage and popularise those good practices which Islam desires humanity to adopt and to discourage, eradicate and crush with full force all those evils of which Islam aims to purge mankind.

## V

### THE INSTITUTION OF GOVERNMENT

How, then, should the Government of a state based on these foundations be formed ? In this connection the most important point is the appointment of the Head of the State termed as *Imam* or *Amir* or *Khalifa* (Caliph) in Islamic terminology. In order to fully understand the stand-point of Islam with regard to this we will have to refer to initial history.

#### Election of the Head of the State

As all of us are well aware, it was more than 1300 years

<sup>1</sup> Quoted, *Tafsir Ibn al-Kathir*.

ago, that the corner-stone of what is called Islamic society was laid in the town of Mecca under circumstances intensely inimical and highly hostile. To initiate and then gradually to develop an Islamic society, in the face of that stern opposition, was the life-mission of our Great Prophet (peace be on him). And, when, after considerable development this Islamic society had achieved political independence and its internal organization had progressed to the stage of a regular state, our Great Prophet Muhammad (peace be on him) became and was accepted as its first Head. He was not elected by anybody. He had been chosen for this very task by God Almighty Himself.

For ten years he performed the duties of the Head of that State and then his mighty soul went to its eternal abode. He left behind no explicit instructions or nomination for the election or appointment of his successor. On account of this abstinence on his part, and by reason of the explicit Qur'anic injunction that all matters affecting the *Ummah* should be decided by consultation, the Companions rightly inferred that with the passing away of the Prophet, selection and appointment of the Head of the Islamic State had been left to the elective discretion of the Muslims, which was to be exercised in accordance with the spirit of the said Qur'anic injunction.<sup>1</sup>

The first Caliph; Abū Bakr, was thus elected publicly. And when his last moment came, although he was personally convinced that 'Umar was the fittest person to be the Caliph, he did not forthwith nominate him as his successor but consulted the most prominent among the Companions, jointly and sever-

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1. No doubt, the Shi'a sect of the Muslims hold the belief that, like the Prophet, the Imams too are chosen and nominated by God Almighty Himself. This divergence of belief from the rest of the *Ummah* i.e., the *Ahl al-Sunnah* has, however, no practical value now, as with the disappearance of the 12th Imam, the Imamate remains in abeyance until he reappears. For all actions in respect of the collective problems of Muslims, therefore, reference has got to be made to some such person who has not been directly chosen by God Almighty but elected by the Muslims themselves.

ally, and then dictated his will in favour of 'Umar. Thereafter, despite his serious illness, he addressed the Muslim masses thus :

"Are you willing to accept him your *Amir* whom I nominate as my successor ? God is my Judge, I have left no stone unturned in coming to (the best) conclusion in this matter, I am not nominating anybody related to me. I nominate 'Umar son of Khaṭṭāh as my successor. Therefore, listen you all to him and obey him."

From the crowd the people cried : "We have heard and we accept."<sup>1</sup>

Here we find that Aḥn Bakr only suggested and recommended the name of 'Umar after consultations with those in whom the people had confidence, and then it was put to the vote of the Muslim masses who accepted him.

Again, when 'Umar was on the point of leaving this world, he noticed that out of the large number of the most reliable Companions of the Prophet, only six persons were then alive to whom the Muslim masses could look for guidance and from amongst whom his successor could be chosen. He, therefore, created a Consultative Body of those six persons and delegated to them the task of selecting the next Caliph from amongst themselves, prescribing that whosoever tried to become the *Amir* without the approval of the Muslim masses was to be headed.<sup>2</sup>

This consultative body ultimately delegated its task to one of its members, 'Aḥd al-Rehman Ibn 'Auf, who went round Madinah to gauge the feelings of the general public in the town. He ascertained the opinions of the women-folk and the reactions of the students of schools also and even of the pilgrims from various parts of the country, who visited Madinah after their pilgrimage at Mecca. After this thorough survey, he came to the conclusion that the Muslim masses had the greatest possible faith in two persons, 'Ali and 'Uthman, of these two,

1. Tabari, *Tarikh al-Umam wa'al-Muluk*, Vol. II, Cairo, p. 618.

2. Muḥammad Hussain Haykel, *Al-Farooq 'Umar*, Cairo, Vol. II, p. 313.

the opinion being slightly more in favour of 'Uthman. So the vote was cast in his favour and he was openly accepted as the Caliph.

Then occurred the tragic and deplorable incident of 'Uthman's brutal assassination which created a serious situation. Some of the Companions, therefore, assembled in the house of 'Ali and told him that nobody was there more suited than him to be the Amir of the Muslims and he should, therefore, shoulder that responsibility. 'Ali declined to do so. But when these people insisted, he, at last, agreed saying.

"If you wish it to be so, then come to the mosque, for my acceptance as Amir cannot be secret nor without the approval of the Muslim masses".<sup>1</sup>

Consequently, 'Ali went to Prophet's Mosque where people were assembled. And it is an incontrovertible fact that the majority of the people accepted him as their Caliph, even though this acceptance was not unanimous.

Lastly, when 'Ali was murderously attacked and the time of his death drew near, he was asked if he permitted the Muslims to accept his son Hasan as their next Amir, his reply was clear :

"I neither ask you to do so, nor forbid you from doing so. You can decide according to your lights."<sup>2</sup>

This, therefore, is the accepted convention of the period of the Caliphate regarding the appointment and election of the Head of the Islamic State, and this is also the sum-total of the collective conduct of the Companions in this important matter. It is based as much on the Prophet's abstinence from nominating his successor as on the Qur'anic injunction that all important decisions in matters of collective interest should be taken by consultation. The point, that can be clearly inferred from these authentic constitutional precedents are :

- (1) In an Islamic State, the election of its Head depends entirely on the will of the general public and nobody

1. *Tabari, op. cit.*, Vol. III, p. 450.

2. *Ibid.*, Vol. IV, p. 112.

has the right to impose himself forcibly as their *Amir*.<sup>1</sup>

(2) No clan or class has a monopoly of this office.<sup>2</sup>

(3) The election should take place with the free-will of the Muslim masses and without any coercion or force.

How is this opinion of the masses to be determined is a point where Islam does not limit its scope by prescribing specific methods. Different methods can be adopted in different places, on different occasions, and under different circumstances, provided such methods are designed only to determine as to who enjoys the greatest measure of nation's confidence and regard.

**The Formation of the Consultative Assembly**

After the problem of the election of the *Amir* the next most important problem is : How are the members of the Consult.

1. There are some people who say that this be accepted as the principle of Islam, what about the verdict of eminent jurists and learned men of the days of the Muslim kings who accepted the authority of those who became the rulers through sheer force of arms. As a matter of fact such people mix up and confuse the following two entirely different and distinct positions adopted by the Muslims scholars of the past :

(1) All the eminent scholars are unanimously of the opinion that the only proper and permissible method is that of election in which the will of the Muslim masses should express itself freely.

(2) Even the most modest attitude adopted by our learned men does not go beyond the fact that such tyrants can only be tolerated in the common interests of collective security, provided such an *Amir* does not interfere with the fundamentals of Islam. In other words, the most that these people do is not to concede a right to revolt, because that would lead to anarchy only. This does not all mean that persons holding this opinion approve of such tyrants and prefer them to properly elected *Amirs*.

2. In relation to this matter also, certain people raise doubts as to how to reconcile it with the *Hadith* in which the Quraysh have been declared to be the fittest for the office of the Caliphate. I have already replied to this in my book : *Rasa'id wa Masa'il*. Vol. I, p. 76, 3rd impression, Lahore.

ative Assembly (*Majlis-e-Shura*) to be elected and who shall elect them ?

From a superficial study of the problem it has been erroneously concluded that because, during the period of the Caliphs, the members of the Consultative Assembly were not chosen through organized general elections, there is no place of elections in Islam and it has been left solely to the discretion of the *Khalifah* as to whom he should consult. This error is due to the fact that the precedents of these times are applied to modern practices without reference to the then prevailing conditions. The correct way would be to apply them only with reference to the then existing circumstances and to make an honest attempt to understand the spirit of those principles and their details as interpreted within the framework of the then existing conditions.

Islam arose in Mecca as an ideological movement. And it is an inherent feature of all ideological movements that persons accepting that movement first, are counted as the true companions and friends as well as advisers of the Leaders of that movement. Likewise in Islam, persons who were the first to associate themselves with the Prophet and his movement, naturally and automatically became his advisers whom he invariably consulted in all cases wherever clear and definite injunctions of the Qur'an were not available. When, however, new blood entered the Islamic body politic and the struggle with the opposing force increased, those who rendered outstanding services by virtue of their sacrifices, insight and wisdom, naturally became prominent without any conscious effort on their part. This election, therefore, took place not by means of votes but by virtue of practical tests and performance which are indisputably a more natural and reliable method. Thus even before the Prophet migrated to Madinah, two kinds of people had already become members of his Consultative Assembly, viz.

- (a) Those who had been associated with him from the very beginning, and
- (b) Those who subsequently became prominent by virtue of

their sacrifices, insight and ability.

The members of both these groups enjoyed the confidence of the Muslim masses also to the same extent to which they enjoyed the confidence of the Prophet himself.

Then occurred the historical event of Migration (*hijrah*) and it took shape in the following way. A year or two before migration, certain influential personalities of Madinah had embraced Islam and through their labours, Islam had established a secure foothold in that city among the tribes of *Aus* and *Khazraj*. It was at the instance and request of these people of Madinah that, leaving their hearths and homes, the Prophet and his followers migrated to that city where the Islamic movement naturally grew into a political organization and blossomed into a full-fledged state. It was, therefore, only natural that these very people, with whose services Islam had prospered and progressed in Madinah should be the leaders of the newly-formed society and its political organization. And naturally again, it was most befitting that these very people should be included in the Consultative Assembly of the Prophet along with his very first associates and tested comrades from Mecca. These people thus became the representatives of people and the members of the Consultative Assembly through a natural process of selection, and they enjoyed the confidence of the Muslim masses to such a degree that if elections of the type current in modern days would have been held, these and these people alone would have been chosen.

Later on, in this society of Madinah, two kinds of people began to become prominent. The first were those who during the next eight to ten years rendered yeoman's service in political, military and missionary fields to such an extent that practically in all important matters every body automatically looked to them. The second group consisted of those persons who gradually became well-known for their wide knowledge and deep insight in the Qur'anic jurisprudence and literature. After the passing away of the Prophet, the people naturally treated them as being the most reliable authorities in these matters.



The Prophet himself, by saying that the Qur'en should be learnt and understood from such and such persons, put his seal on their erudition. Thus, these two groups also were elected as a matter of course, like those before them, by the same process of natural selection and became automatically included in the Consultative Assembly of the Prophet's successors. There was, thus, no need to take a vote for them and even if vote was taken, there was nobody else in that society who would have been preferred by the voters. And these constitutional conventions under which fresh nominees continued to be incorporated in the Consultative Assembly by virtue of their services, experience and outstanding intellectual attributes, automatically received universal approval.

This was the class of people which was known as *Ahl al-Hal wal-'Aqd* (i.e., those who could "tie" and "untie"), and it was these people without whose advice no decision was ever taken in any important matter. As to their constitutional status, some opinion can be formed by the fact that when, after the unfortunate assassination of Hadrat 'Uthman, some of the Companions came to Hadrat 'Ali to ask him to accept the office of the Caliphate, Hadrat 'Ali said :—

"This is not a matter whereon you can take a decision. This is a task for all those who can advise and have fought in the battle of Badr (*Ahl al-Shura wa ahl al-Badr*). Whosoever is approved by them will be the Caliph and let us, therefore, congregate and consider it."<sup>1</sup>

It is thus clear that at that time there were certain specific persons called "*Ahl al-Hal wal-'Aqd*" who had been continuously holding the position of great trust for a very long time and were thus entitled to take collective decisions in all important matters affecting the *Ummah*. There is, therefore, no valid ground to presume that the *Khalifah* could call for consultations whomever he liked or that it was not generally known as to who were his advisers (*Ahl al-Shura*) entitled to give advice to him in the most important matters affecting the

1. Ibn Qutaibah, *al-Imamah wa al-Siyasah*, Cairo, p. 41.

collective good.<sup>1</sup>

From the conventions of the Caliphs, nay, even from the conduct of the Prophet himself, the inferred rule is that the *Amir's Consultative Assembly* is not to consist of his hand-picked men but only of those persons who enjoy the confidence of the masses. They should be such whose sincerity, ability and loyalty is above reproach in the eyes of the public and whose participation in the major decisions of the State would itself be a guarantee of the fact that free and willing co-operation of the masses would be available to the State in the implementation of all the decisions thus taken.

1. Here the question naturally arises : Why were these *Ahl al-Hal wa al-'Aqd* comprised only of people from Madinah, although the frontiers of the Islamic State had extended beyond Arabia up to Afghanistan in the East and North Africa in the West during the period of the Righteous Caliphs, and why were not loyal representatives from other parts of the State summoned for this purpose ? The answer is that it was due to two very valid reasons, namely :—

(a) The Islamic State was not a mere National State. It had come into existence in a unique fashion. With the preliminary propagation of the Islamic ideology in the minds and morals of the people an ideal society was first created, which subsequently developed into an ideal state. In such a state, naturally, the locus-centra of all devotion was the individual who had initiated and then perfected the revolution. Next to him, the body of his associates and right-hand men became the repository of all public confidence and faith. Their leadership was thus most natural and nobody else from amongst the society could possibly be anyway more worthy of the confidence of the public. That is exactly the reason why, in spite of complete freedom of expression, even in that era, nobody from any corner of the country raised even a single voice of protest against the selection of only the people from Madinah for inclusion in the Consultative Assembly.

(b) Secondly, it was not possible in the then existing conditions of life to hold general elections in an area extending from Afghanistan to North Africa and thereafter to expect that all elected members of the Consultative Assembly could attend all its ordinary sittings and meetings.

It may well be asked as to how the persons enjoying such confidence of the masses are to be determined today. It is evident that the shape of things which existed in the special circumstances of the early days of Islam is not to be found today, nor do the obstacles existing in the civic conditions of that era exist now. Consequently, after considering the circumstances and needs of modern times, we can adopt all such possible and permissible methods whereby we might be able to find out truly as to which persons enjoy the confidence of the masses in greatest measure. The modern system of elections is one of these permissible methods, provided it is not tarred with these corrupt practices which render democracy a sheer farce.

### **The Form and Nature of Government**

We now come to the third important point : What should be the form and nature of the Government of an Islamic State ? If we closely study the convention of the Caliphs to obtain guidance on this point, we will notice that the *Amir* was the only person to whom obedience and loyalty were enjoined and to whom the people delegated in the fullest possible measure their right of taking decisions in all matters concerning their collective existence. His status was, therefore, entirely different from the status of the British Monarch, or the French President or the British Prime Minister, or the American President, or the Head of the Soviet Union. He was not only the President of the State, but also the Prime Minister. He attended the parliament himself and presided over all its sittings. He used to take the fullest part in its discussions and was responsible not only for his own acts and opinions but also for all the decisions of his Government. In his parliament there was neither any specific Government Party nor any specific Opposition Party. The whole parliament was his party as long as he kept to the right path. But as soon as he deviated from it, his whole party automatically turned into opposition. Every member of his parliament had full freedom to vote for or against him on any point and even his Ministers were free to oppose him if they felt impelled to do so honestly and sincerely. And,

in spite of all this, the Ministers and the Head of the State were all along working in complete co-operation and harmony and the question of anybody resigning in protest never arose at all.

The Caliph was not only answerable before the parliament but also before the people; and that not only for his public acts but also for his private and personal conduct. Five times every day he had to face the people in the mosque, and he had to address them every week on Fridays. Each and every member of the public had the right to stop him in the streets of Madinah to question him on his conduct or to demand any of his rights from him, and he would do so at all times and at all hours. No such rule existed that if a question was to be asked from the Government, some member of the parliament must give a previous notice about it. The general proclamation of the Head of the Islamic State was :

"Assist me when I act rightly; but if I go wrong point me on the right path. Obey me as long as I remain loyal to Allāh and His Prophet; but if I disobey Allāh and His Prophet, then none is under the slightest obligation to accord obedience to me."<sup>1</sup>

This form of government cannot be identified with any modern form of government. But it is this which stands in the fullest accord with the ideology of Islam. It is, therefore, our ideal too. But it can be achieved only when the society has been already developed in accordance with all the revolutionary teachings of Islam. And that is exactly why no sooner than the Islamic society deteriorated this idea of government could not be fully adhered to. As to the present times, if we desire to revert to it, it would be essential to adopt the following four basic principles initially, and then to adjust them in accordance with our subsequent requirements and needs :

- (1) Whosoever is entrusted with the responsibilities of government should be required to face not only the

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1. Muhammad Hussain Haykal, *Al-Siddiq*, Cairo, p. 67.

representatives of the public but the public itself; further, he should not only discharge his duties in consultation with those entrusted with the job but also should be answerable for all his actions.

- (2) We should reform the prevalent system of strict party-loyalties—a system which instead of remaining an agency of public opinion becomes the standard of truth and untruth. Such a system pollutes the government with a false sense of loyalties, and it carries within it the possibility that once a group of self-seeking people comes into power, it may manoeuvre party politics; at public expense itself, in such a way as to continue in the saddle *ad infinitum*.
- (3) The system of government should not be based on such complicated rules and regulations as may render it extremely difficult for the earnest workers to work, for the critics to criticise and for the people in general to find out the root cause of the evils that might arise from time to time.
- (4) The last and the most important principle should be that only those elected as Head of the State and as members of the Consultative Assembly, who possess those qualities and are equipped with those qualifications which have been prescribed by Islam for the office-bearers.

## VI

### RULERS AND THEIR QUALIFICATIONS

From the Islamic point of view, the qualifications of office-bearers is very important. In fact, this alone can guarantee the proper functioning of the Islamic Constitution.

As regards the eligibility for membership of the Consultative Assembly or for the post of the Head of the State, there is one aspect which might be termed as legal eligibility, on the basis of which an Election-Tribunal or a Judge, after due con-

sideration and verification, may declare a person eligible or non-eligible for election. There is yet another aspect of eligibility on which the selectors, the proposers and the voters have their judgment. The first aspect of eligibility may be possessed by everyone of the millions of citizens of a state, but it is the second which actually elevates a very select few to the top. Criteria with regard to the first aspect are to be included in a few operative clauses of the Constitution. But the standards of the second aspect of eligibility must permeate the spirit of the entire Constitution. The success or otherwise of any constitution would depend on the fact that the minds of the masses have or have not been trained properly to elect only those who are eligible for those august positions in accordance with the *spirit* of the Constitution rather than its *form* only.

Both the Qur'an and the *Hadith* give clear guidance about these two aspects of eligibility. As regards the first, the following four conditions have been prescribed :

(1) *Should be a Muslim*—The injunction of the Qur'ān is :  
 "O ye who believe ! Obey Allāh, and obey the Prophet and (obey) those who are in authority *from among you*." (4 : 59)

(2) *Should be a Male*—The Qur'an says :  
 "Men are in charge of women." (4 : 34)  
 And the Prophet declares :

"Verily, that nation would not prosper which hands over the reins of its government to a woman."<sup>1</sup>

(3) *Should be sane and adult*—The Qur'an lays down :  
 "And do not make over your property, which Allāh has made for you a (means of) support, to the weak of understanding." (4 : 5)

(4) *Should be a citizen of the Islamic State*—The Qur'an declares :

"And those who have declared their belief in Islam but have not migrated (to the Islamic State), you

1. *Bukhari, al-Sahih.*

have nothing to do with their guardianship until they migrate." (8 : 72)

These are the four legal qualifications which determine a person's eligibility to the membership of the Consultative Assembly or to the post of the Head of an Islamic State. But the question is : Whom, among the countless legally eligible persons, should we elect and whom should we ignore for those important offices of State ? A clear reply to this most important question also is to be found both in the Qur'an and the *Hadith*.

The Holy Qur'an says :

- (a) "Verily Allāh commands you to make over trusts (i.e., positions of responsibility) to those who are trustworthy." (4 : 58)
- (b) "Verily the most respectable of you in the sight of Allāh is the one who is most God-fearing." (49 : 13)
- (c) "He said : Verily Allāh has chosen him (to rule over you) in preference to you, and He has increased him abundantly in knowledge and physique." (2 : 247)
- (d) And obey not a person whose heart We have permitted to become unmindful of Our remembrance, one who is followed by the dictates of his own desires and his case is that in which due limits are transgressed." (18 : 28)

The Holy Prophet (peace be upon him) says :

- (a) "Whoever honours and reveres an innovator (in religion), helps in bringing down the edifice of Islam."<sup>1</sup>
- (b) "By God we do not assign the affairs of our government to any one who aspires for it or is greedy in respect of it."<sup>2</sup>
- (c) "We consider the seeker after a post (of trust and responsibility) as the most untrustworthy."<sup>3</sup>

Some of these qualifications can be easily incorporated as operative clauses in our Constitution. A self-styled candidate

1. Quoted by *Al-Baihaqi*.

2. Quoted by *Bukhari* and *Muslim*.

3. Quoted by *Abu Da'ud*.

for election should be declared ineligible. As regards other qualifications for which no legal limit can be prescribed, we can certainly include provisions for them in the chapter on Directives. The duties of the Election Commissioner would, thereby, have to include the obligation to inform and educate the masses regarding the qualifications which are essentially and indispensably required and prescribed for *Ulu'l-amr* in Islam.

## VII

### CITIZENSHIP

We now come to the question of citizenship. Since Islam is a system of both thought and conduct and since it aims at creating a state on the basis of its ideology, it prescribes two types of citizenship. Furthermore, because straightforwardness and truthfulness form the very quintessence and soul of Islam, this idea of dual citizenship is plainly prescribed in its political structure without any beating about the bush. It does not, for instance, try to mislead the world by adopting methods of giving full and equal rights to all its citizens on paper, and yet all the time discriminating between them in practice and withholding even the fundamental human rights from a considerable section of the population, like Russia. In fact, in all modern countries the national and the ideological minorities<sup>1</sup> are invariably treated in this very fashion. The course adopted by Islam in this respect too is most rational, just and honourable.

The two kinds of citizenship that Islam envisages, are the following :

- (1) The Muslims ; and
- (2) The *Zimmis*.

(1) As regards the Muslim citizens, the Qur'an speaks thus :

"Verily those who believed and migrated and struggled hard in Allāh's Way with their property and their souls,

1. It must not be forgotten that there is a world of difference between a political minority and an ideological cultural or national minority.



and those who gave (them) shelter and help—they are guardians of each other ; and (as for) those who believed and did not migrate (to the Islamic State), you have nothing to do with their guardianship until they migrate". (8 : 72)

From this verse it is clear that the basic qualifications for citizenship as prescribed by the Qur'an are two, viz., faith in Islam and original or acquired domicile in an Islamic State. If a person, even though he may be from amongst the faithful, does not renounce his allegiance to a non-Islamic State and migrate to Islamic State, he is not and cannot be its citizen. Contrary to this, all those believers who, whether they were born in the Islamic State or have migrated to it, are its citizens at par and helpers of one another.<sup>1</sup>

Upon the shoulders of the Muslim citizens of an Islamic State devolves the main burden of running it in accordance with Islam's best traditions : as they alone are supposed to believe in it implicitly. On them alone it enforces its laws as a whole and enjoins them to carry out all its religious, moral, cultural and political directives. It invests them with all its obligations, and demands from them every sacrifice for the defence of its realm. Concurrent with this, it gives them the right to choose the Head of their State and to be the members of its Parliament. It also entitles them to be appointed to the keyposts, so that the basic policy of this ideological state remains in conformity with the fundamentals of Islam. That is the standpoint of Islam is

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1. A precautionary measure prescribed by the Qur'an in the case of the people who migrate to the Islamic territory is to test their *bona fides*. This, though spoken with reference to immigrant ladies, forms the basis of the general inference that the people who migrate to an Islamic State prove their *bonofides* i.e., that they are truly Muslims and immigrants. This is to safeguard against evil-doers entering the Islamic State under the guise of immigrants. Although the truth of one's faith is known only to God, the State in all such cases should try to verify the antecedents of immigrants to the best of its resources and means.

proved by the utter absence of even a single instance in the days of the Holy Prophet (peace be on him) or the Caliphs where a *Zimmi* (non-Muslim citizen) may have been made a member of the Parliament, or the Governor of a province, or the *Qadi*, or the Director of any Government department, or the Commander of the Army, or a Minister of the Government; or may have been ever allowed to participate in the election of the Caliphs, although the number of *Zimmis* even in the days of the Prophet was considerable and during the days of *Khilafat-e-Rashidah* it had gone up to millions. As such, were it right to give them a share in the Government, we fail to understand how the Prophet of God (peace be on him) could have done injustice to them in the first instance, and how the persons directly and diligently trained by the Prophet himself could have continued to "deprive" them of their "due rights" for the next thirty years.

(2) By *Zimmis* are meant all those non-Muslims who have affirmed to remain loyal and obedient to the Islamic State wherein they propose to live, regardless of the country they were born in. For all citizens of this kind, Islam furnishes a guarantee of protection of life and limb, property and culture, faith and honour. It enforces only its law of the land on them and it gives them equal rights with Muslims in all civil matters. They are eligible for all kinds of employment except for key-posts: they have an equal share with Muslims in the matter of all civil liberties, and even in economic matters. No discrimination is made between a Muslim and a *Zimmi*. Furthermore, the *Zimmis* are exempt from the responsibility of the State, which devolves exclusively and entirely on the Muslim citizens.

If any one has any objection with regard to these two kinds of citizenship in an Islamic State and their distinctive features, he should try to acquaint himself with the details of the treatment meted out practically by other ideological states to the people who do not believe in their ideology and with the disabilities attaching to all national minorities of the national

states. In truth, it can be categorically stated that, compared with other systems of government, Islam has definitely enjoined the most just, the most tolerant and the most generous treatment to the minorities who choose to stay within the borders of its state and lead a life directed and governed by those principles which are different from and even hostile to the ideology of the majority.

In fact, the best and most just solution of the unusual complications arising out of the existence of a foreign element in the body politic of a nation or an ideological state is offered by Islam alone. Others have resolved this difficulty in one of the two ways : They have either wiped out the minorities or have kept them under perpetual bondage as untouchables. Islam, on the other hand, adopts a very humane and equitable method. It prescribes a line of demarcation between its adherents and nonadherents and on its followers alone it enjoins complete and absolute adherence to its basic and fundamental principles with all their details. In addition to that, it places only on its adherents the responsibility of defending and running the State in accordance with those principles.

To those who do not submit to its principles, Islam gives ample latitude to lead their lives in their own way, binding them only to that extent which is the minimum essential for maintaining State Administration. And although it absolves them from the liabilities of running or defending the State, it guarantees them all cultural and human rights.

### **Rights of Citizens**

The next question relates to the fundamental rights of citizens in an Islamic State.

In Islam, the first and foremost right of the citizens is the protection of their life, property and honour, together with the assurance that this right would not be interfered with, except on valid legal grounds. The Prophet has explicitly and repeatedly enunciated this thing. In his well-known address given on the occasion of the Farewell Pilgrimage, wherein the details of the Islamic way of life were stressed, he said :

"Your lives, your properties, and your honour are as sacred as this day (of the Hajj)".<sup>1</sup>

There is only one exception to it, which the Prophet himself describes in another *Hadith* as *إلا بحق الإسلام*, i.e., if there is demand for life, property or honour according to any law of Islam, it shall have to be realised in accordance with the prescribed procedure.

The second important right is that of the protection of personal freedom. In Islam, personal freedom cannot be violated, save after proving delinquency in accordance with the due process of law and never without giving an opportunity to the accused to put up his defence. It has been related that some people were arrested in Medinah, in the days of the Prophet, for being of doubtful antecedents. Subsequently, while the Prophet was delivering the Friday Sermon, a Companion got up and enquired of him as to why and on what grounds has his neighbours been arrested. The Prophet kept quiet while the question was repeated twice, thus giving an ample opportunity to the Police Officer present there to explain the legal position. When the question was put a third time, and it again failed to elicit the reply from the Police Officer, the Prophet directed that those people should be released.<sup>2</sup> This is a conclusive proof of the fact that as long as a specific charge is not laid against a person, he cannot be detained or imprisoned. Imam Khattabi, while explaining this *Hadith* in his *Ma'alim al-Sunnan*, says that in Islam detention is only of two kinds :

- (a) detention under orders of the court, namely, when a person is sentenced by the court and is kept in prison, till the expiry of the term of his sentence ; and
- (b) detention for investigation. Besides these, there can be no other ground for depriving a person of his freedom.

Imam Abū Yousaf, in his *Kitab al-Kharaj*, has also stressed the same point, i.e., nobody can be imprisoned on false or

1. *Muslim* : Farwell Pilgrimage : *Ibn Hisham*, pp. 389-391.

2. *Abu Da'ud*.

unproved charges. The Holy Prophet did not imprison people on mere accusations. It was necessary that the two parties should appear in the court and if the complainant failed to prove his allegation with all the evidence at his disposal, the defendant was acquitted.

'Umar, the second Caliph, while pronouncing judgment in a famous case, said :

"In Islam no one can be imprisoned without due course of justice."<sup>1</sup>

The third important right is that of freedom of opinion and belief. 'Ali, the fourth Caliph, has given the best exposition of Islamic law in this respect. During his period, the party known as the *Kharijites* reared its head in revolt. This group was very similar to the modern anarchists and nihilists. Its members defied the State openly and denied the need for its existence in Islam, and they were making preparations, to wipe it out by sword. 'Ali (God bless his soul) sent the following message to them :

"You may live wherever you like, the only condition between us being that you will not indulge in bloodshed and will not practise cruel methods."<sup>2</sup>

On another occasion, 'Ali addressed them thus :

"As long as you do not indulge in actual disruption and disorder, we will not wage war against you."<sup>3</sup>

This makes it quite clear that even an organised group may entertain any set of ideas and may also peacefully practise them ; and an Islamic State would not hinder or harm it. But if it tries to foist its ideology on others by violent means and endangers the security of the State or its administration, necessary action shall certainly be taken against it.

Another right which has been greatly emphasised in Islam is that of the provision of basic necessities of life to all citizens

1. Imam Malik, *Muwatta*, *Book Sharaat al-Shahid*, *Kitab Ahkam al-Khilafat*.

2. Shaukani, *Nail al-Awar*, Vol. VIII, p. 139.

3. *Ibid.*, p. 133.

without distinction of caste or creed. *Zakāt* was made compulsory for Muslims for this very purpose and the Prophet himself says :

"It shall be taken from the rich and distributed amongst the poor and the needy."<sup>1</sup>

At another place he (peace be on him) enunciates the following principle :

"The Government is the *guardian* (helper) of everyone who has no guardian."<sup>2</sup>

And again :

"Whoever leaves liabilities (such as debts or destitute families at the time of his death), the burden (of all such liabilities) is upon us (i.e., the State)."<sup>3</sup>

In this matter, Islam has made no distinction between the Muslims and non-Muslims. It gives to the *Zimmis* the same guarantee as it gives to the Muslims, that the State would not let anybody be without food and clothing or a place of residence. Caliph 'Umar once found a *Zimmi* begging alms. He granted a pension to him, absolved him from the payment of *Jizyah* and wrote to his Treasury Officer :

"By God, we fail to do justice if we leave people unprovided for in their old age, while making the fullest use of their services in the prime of their life."<sup>4</sup>

The Covenant that Khālid, the Sword of God, gave to the non-Muslims of Hiraḥ, contained the condition that whosoever became old or afflicted or destitute, would not be required to pay the *Jizyah*, and that, on the other hand, he and his family would be looked after from the funds of the State Treasury.

### Duties of Citizens

As against these rights of the citizens, there are certain rights of the State upon its citizens. Among these, the first is that of obedience, for which the technical term of *Sam'-o-Ta'at*

1. Related by *Bukhari* and *Muslim*.

2. *Abu Da'ud*, *Tirmizi*.

3. Related by *Bukhari* and *Muslim*.

4. *Abū Yūsuf*, *Kitāb al-Kharāj*, p. 72.

is used in Islam. The Prophet has explained it thus -

"The State shall have to be heard and shall have to be obeyed, in adversity and in prosperity, and whether it is pleasant or unpleasant to do so".<sup>1</sup>

In other words, the order of the State, be it palatable or unpalatable, easy or arduous, shall have to be obeyed under all circumstances (save of course when it involves God's disobedience, as discussed earlier).

The second obligation on the citizens *vis-a-vis* an Islamic State is that they should be loyal to it and work for its welfare. In the Qur'an and the *Hadith* the term نصح "*Nus'h*" has been used for this purpose, which in Arabic means more than what is conveyed by the words loyalty and allegiance. It inherently demands that a person should, truly and faithfully and with all his heart, wish and work for the good, prosperity and the betterment of the State, and should not tolerate anything likely to harm its interests.

It is also obligatory on the citizens of the Islamic State to co-operate whole heartedly with the government and to make sacrifices of life and property for it, so much so that if any danger threatens the State, he who wilfully refrains from making a sacrifice of his life and property for warding off that danger has been called a hypocrite in the Qur'an.

Broadly speaking, these are the salient features of that ideal form of government which we call an Islamic State. You may describe it by any modern technical term you choose. You may call it secular, or democratic, or theocratic. We will not fight for giving it a particular name. What we do insist upon is the content. So long as we claim to believe in Islam and to accept it as our way of life, our system of government should essentially be based on the fundamentals prescribed by the Qur'an and by the Holy Prophet Muhammad (blessings of Allāh be with him for all times to come).

## Chapter 7

# Fundamentals of Islamic Constitution

(as enunciated in the Qur'an and the *Sunnah*)

In the last quarter of 1952, when the Basic Principles Committee Report was reaching completion, a very vicious campaign was launched in the press against Islamic Constitution. It was alleged that the demand for Islamic Constitution was merely a political stunt and that the Qur'an and the *Sunnah* throw no light on problems of Constitutional Law. Maulana Maududi wrote this article in November 1952 and showed that the fundamentals of the Islamic Constitution are clearly stated in the Book of God and the Traditions of the Holy Prophet (peace be on him). It was a telling rejoinder to the protagonists of the plea that 'the Qur'an cannot give a Constitution', and left the opponents dumb-founded. It was published in Urdu, Bengali, and English and is now being included in the present volume to show the salient features of Islamic Constitution as enunciated in the Qur'an and the *Sunnah* — Editor.



# FUNDAMENTALS OF ISLAMIC CONSTITUTION

(as enunciated in the Qur'an and the *Sunnah*)

AS the framing of our Constitution is entering its final stage, it is the duty of all who are conversant with the subject to assist the Constituent Assembly in framing an Islamic Constitution. From the very beginning we have been trying to discharge our duty to the best of our ability. The representative 'Ulamā of all the Muslim schools of thought have rendered meritorious services in this connection. In January 1951 they unanimously formulated the basic principles of the Islamic State.<sup>1</sup> But it is very sad to note that some people have all along been trying to confuse both the common people and the members of the Constituent Assembly about the fundamentals of Islamic Constitution. They have been repeating time and again that there is no guidance in the Qur'an for the formulation of a Constitution, that Islam does not prescribe any special form of government and that there is no such thing as an Islamic Constitution. In spite of the fact that these statements are absolutely baseless, it is just possible that this persistent propaganda might produce confusion in the minds of those who are not well versed in the Qur'an and the *Sunnah*. It has, therefore, become necessary to cite verses of the Qur'an and the Traditions of the Prophet (peace be on him) in order to counter this propaganda and to show that the principles put forward by the 'Ulamā for the formulation of an Islamic Constitution are based on the original sources of Islamic Law. Incidentally, this will also do away with the only possible excuse of the members of the Constituent Assembly that they were not informed in time about the commands of the Almighty-God and His Messenger concerning the Constitution of the State.

1 See Appendix 1—Editor.

We reproduce below the relevant Qur'anic verses and the authentic Traditions of the Prophet (peace be on him), along with the constitutional principles which are deducible from them :

# I

The Holy Qur'an says :—

"The (right of) Command is for none but Allāh. He hath commanded that ye follow none but Him. That is the right way (of life)". (12 : 40)

This verse clearly points out that the authority of giving commands and the title to sovereignty is the sole prerogative of Allāh. There is nothing in the text to confine His Sovereignty merely to its metaphysical aspects. It is directly addressed to mankind and is obviously all inclusive. It comprehends all spheres of human life : the doctrinal, moral, legal as well as political. The Qur'an itself specifically states that all these spheres of sovereignty belong to Allāh alone, and it puts it in very clear terms that Allāh is not only the Sustainer and the Lord of mankind but also its Sovereign and Ruler :—

"Say (O Muhammad) : I seek refuge in the Sustainer of mankind, the Sovereign (Ruler) of mankind, the Lord of mankind." (114 : 1-3)

The Qur'an further lays down that Allāh is the Master of the land and has no partner in His Sovereignty. Thus says the Qur'ān :

"Say : O Allāh ! Owner of the Kingdom ! Thou givest kingdom to whom Thou wilt and takest it away from whom Thou wilt". (3 : 26)

"None is a partner in His Sovereignty". (18 : 111)

The Qur'an declares very explicitly that God is the sole Creator and, therefore, to Him alone should and does belong the right to rule over His Creation. The Qur'an says :

"Beware ! His is the creation and His is the (right to) Rule". (7 : 54)

Obviously, the sovereignty which the Qur'an claims for God is not merely of the metaphysical type but is also legal and

political. The Qur'an states this fact specifically in the following verses :

"Follow the revelation sent unto you from your Lord and do not follow the (so called) guardians other than Him": (7 : 3)

"And those who do not make their decision in accordance with what has been revealed by Allāh, are (in fact) disbelievers". (5 : 44)

This conception of the political and legal sovereignty of God is one of the fundamental principles of Islam. Indeed, all Muslim jurists are agreed that legal sovereignty is the exclusive prerogative of God. Thus, for instance, in his famous book : *Al-Ihkam fi Usul al-Ahkam*, which deals with the principles of *Fiqh*, 'Allāma Amidi writes as follows :

"Know that none but Allāh is the Sovereign and no command is worthy of obedience except that which is given by Him".

Shaikh Muhammad Khadhiri, a modern Egyptian writer on Islamic Jurisprudence, says in his book *Usul al-Fiqh* :

"As Command is the exclusive prerogative of Allāh, none is entitled to give any Command but He. This is a point on which all Muslims are agreed".

It is quite clear from the above that state becomes Islamic only when it recognises in clear terms the political and legal sovereignty of Allāh and binds itself to His obedience and acknowledges Him as the Paramount Power Whose commands must be upheld, come what may.

## II

All the prophets in general and the Holy Prophet Muhammad (peace be on him) in particular are the representatives of this political and legal sovereignty of God. As a corollary to this, the prophets of God are entitled to the obedience of those who accept God as their Sovereign. It is, therefore, the bounden duty of every such individual, community and nation as believe in Divine Sovereignty to follow the pattern

set by them and to submit to their decisions without demur. This principle has been very clearly enunciated in the Qur'an over and over again. A few verses are quoted below in proof thereof :

- (a) "Whoso obeys the Messenger, obeys Allāh". (4 : 80)
- (b) "We never sent any Messenger, but for the sole purpose that he should be obeyed under the sanction of Allāh". (4 : 64)
- (c) "And take whatsoever Messenger gives you and abstain from whatsoever he forbids". (59 : 7)
- (d) "O Muhammad ! We have revealed this Book to you with Truth that you may judge among mankind by (the light) which Allāh has shown to you". (4 : 105)
- (e) "Nay, O Muhammad ! by thy Lord, they will not be believers until they accept you as the final arbiter in all their disputes, and submit to your decision wholeheartedly without any heartache". (4 : 65)

From these verses we derive the second fundamental principle of the Islamic Constitution, namely, that it must also recognise the *Sunnah* of the Prophet as the source of law and must incorporate a specific article to the effect that neither the Executive nor the Legislature nor the Judiciary can issue order or enact laws or pronounce verdicts contrary to the *Sunnah*.

### III

The Qur'an says :

"Allāh has promised to those among you who believe and work righteous deeds, that He will most surely make them His vicegerents in the earth as He had made the like people before them His Vicegerents." (24 : 55)

This verse enunciates two very important constitutional principles :

- (1) The real status of an Islamic State is not that of a Sovereign but of a vicegerent.
- (2) In an Islamic State, the powers of "vicegerency" are vested not in any one individual or family or group but in the whole Muslim community—of course, when

it is blessed with the possession of an independent state.

The concepts of 'Sovereignty' and 'Vicegerency' need some elucidation. It is inherent in the very conception of sovereignty that the authority of the sovereign power should neither be limited by any power other than its own free-will nor bound by any law imposed from outside. Thus if a state acknowledges that the injunctions of God and His Messenger are above question, and neither its executive can issue any order nor its legislature can pass any laws nor its judiciary can give any verdict repugnant to them ; it means that it has surrendered its claims to sovereignty in favour of God and His Messenger. On this acknowledgement its position automatically becomes that of an agent or vicegerent of God and His Messenger. To say that such a state possesses absolute sovereignty (except with reference to other state of the world) would be a contradiction in terms. No doubt, an Islamic State is a sovereign state in the real sense of this term *vis-a-vis* the other states of the world, but if it tries to assert its sovereignty *vis-a-vis* the commands of God and His Messenger, this will amount the clear negation of its Islamic character.

As to the second principle, it would be noted that Islam vests all the Muslim citizens of an Islamic State with 'vicegerency'. Thus the 'vicegerency' in an Islamic State is popular and not limited to any person, class or clan. And it is the 'popular vicegerency' that forms the basis of democracy in an Islamic State whiles 'popular sovereignty' is its basis in a secular state. In the Islamic polity, the term 'vicegerency' has been adopted because the authority that vests in this society and its state is delegated by God and can be wielded only within the limits prescribed by Him. But as explained above, the authority is delegated to the Muslim community of the State as a whole and not to any particular individual or group. As a result of this, the government can be formed only with the consent of all the Muslim community of the State as a whole and not to any particular individual or group. As a result of this, the government can be formed only with the consent of

all the Muslims or their majority and can function and remain in power only as long as it enjoys their confidence. This is why Caliph Abū Bakr refused to be called the 'vicegerent of God' as he was not directly appointed by God but was elected by the Muslim community to wield the delegated authority on their behalf.

These two principles demand that the constitution of an Islamic State must forsake all claims to absolute sovereignty and declare in unequivocal term that it is merely the vicegerent of God and its function is to execute His will and commandments.

## IV

How this principle of 'Popular Vicegerency' should be translated into action has been described clearly in the following:

"They manage their affairs by mutual consultation".

(42 : 38)

This verse tells us the distinctive feature of the Islamic way of life, namely, that all the collective affairs are performed by mutual consultation. From the context where this verse occurs, it is evident that it is not a mere statement of fact but an injunction and a command. In this connection Khatih al-Baghdadi quotes the following from Caliph 'Ali :

"I said, 'O Messenger of Allāh ! what should we do if, after your demise, we are confronted with a problem about which we neither find anything in the Qur'ān nor have anything from you' ? He replied : 'Get together the obedient (to God and His Law) people from amongst my followers and place the matter before them for consultation. Do not make decisions on the basis of the opinion of any single person'."¹

Pointing out the true spirit of consultation, the Holy Prophet (peace be on him) says :

"The man who gives a counsel to his brother knowing

1. Alusi, *Ruh al-Ma'ani*.

full well that it is not right, does most surely betray his trust".<sup>1</sup>

As regards the mode of consultation, it has been very wisely left to the discretion of Muslims. Islam does not prescribe any definite form for the formation of the consultative body or bodies for the simple reason that it is a universal religion meant for all times and climes. It does not, therefore, lay down whether the people should be consulted directly or through their accredited representatives; whether the representatives should be elected in general elections or through electoral colleges; whether consultative body should have one house or two houses, etc. Obviously, these are matters of detail and can vary with different societies and under different conditions. That is why the *Shari'ah* leaves these problems open for solution according to the needs of the time. The following three things, however, are essential in the light of the Qur'anic verse and the Traditions of the Prophet cited above :

- (1) As no collective matter of the Muslims should be conducted without consulting the people concerned, this rule will apply in the very first instance to the appointment of the Head of the State. As such, it rules out monarchy, despotism and dictatorship. Incidentally, it does not permit the Head of the State to enjoy the power suspending the constitution at his will, for during the period of suspension he would be nothing short of an autocrat.
- (2) All the people concerned should be consulted directly or through their trusted representatives.
- (3) The consultation should be free, impartial and genuine. Any consultation held under duress or temptation is in reality no consultation at all.

Thus, whatever the details of the Constitution, these three principles of the *Shari'ah* must be observed, and no loophole should be left whereby anyone gets the opportunity at any time to govern without consulting the people or their accredited

<sup>1</sup> Related by *Abu Da'ud*.

representatives. Furthermore, the Islamic Constitution must devise such a system of election as may enable the whole community to give their verdict without any tinge of fear, favour or fraud.

## V

As regards the qualifications of the Head of the State, the Ministers, the members of the Consultative body and the officers in general, the following instructions are found in the Qur'ān and the *Sunnah* :

The Holy Qur'ān says :

(a) "Verily, Allāh Commands you to make over trusts (i.e., positions of responsibility) to those who are trustworthy". (4 : 58)

(b) As a matter of fact, the noblest of you in the sight of Allāh is the one who is most Godfearing". (49 : 13)

The Holy Prophet (peace be on him) says :

(a) "Your best leaders are those whom you love and who love you and for whom you pray and who pray for you, (while) your worst leaders are those whom you hate and who hate you and whom you curse and who curse you".<sup>1</sup>

(b) "By God, we do not assign the affairs of our government to any one who aspires for it or is greedy in respect of it".<sup>2</sup>

(c) "We consider the seeker after a post (of trust and responsibility) is the most untrustworthy."<sup>3</sup>

Not only the Qur'ān and the *Sunnah* but also our history testifies that Islam abhors the very idea of 'a person seeking after positions of trust'. Thus we are told by Qalqashandi :

"It is related of Ahū Bakr that he enquired of the Messenger of Allāh about appointments on posts of trust.

1. Related by *Muslim*.

2. Related by *Bukhari* and *Muslim*.

3. Related by *Abu Da'ūd*.



He replied : 'They are for those who do not aspire for them and not for those who are greedy after them ; they are for those who run away from them and not for those who scramble for them ; they are for those to whom they are offered (without asking) and not for those who claim them as their right'.<sup>1</sup>

Although the instructions contained in the above-mentioned quotations are of a general nature and do not specify any particular machinery of election for bringing the right type of people to the helm of affairs, it is the duty of the constitution-makers of today to devise practical means for putting these injunctions into practice. They should evolve such a system of elections as would ensure the appointment of only those who are trustworthy and pious, are loved by the people and are their well-wishers. They should also devise effective measures to defeat the designs and machinations of those who scramble for posts of truth and are consequently hated and cursed by the people in spite of their so-called "victories" in the elections.

## VI

The Holy Qur'ān says :

"Men are in-charge of women". (4 : 34)

And in a *Hadīth* we have been told :

"A nation that entrusts its affairs (of the State) to a woman can never prosper."<sup>2</sup>

These injunctions of the Qur'ān and the *Sunnah* categorically declare that the posts of responsibility in an Islamic State (whether it be its presidency, ministry or membership of its legislature or the directorship of some department) cannot be entrusted to a woman.

In Islam there is a functional distribution between men and women and according to that the fields of politics and administration belong to the men's sphere of responsibilities. There-

1. Qalqashandi, *Subh al-A'sha*, Vol. I, p. 240.

2. Related by *Bukhari*,

fore it will not be in keeping with the teachings of Islam to drag women into these affairs. And to do so would be clearly against the injunctions of Allāh and His Prophet (peace be on him).<sup>1</sup>

## VII

The Qur'ān states that :

"(Muslims are) those who, if We give them power in the land, establish the systems of *Salāt* (worship) and *Zakāt* (poor-due) and enjoin virtue and forbid evil." (22 : 41)

This verse states clearly the aims, objects and duties of an Islamic State. Unlike a Secular state, its duty is not merely to maintain internal order, to defend the frontiers and to work for the material prosperity of the country. Rather, its first and foremost obligation is to establish the systems of *Salāt* and *Zakāt* to propagate and establish those things which are considered to be 'virtues' by God and His Messenger, and to eradicate those things which have been declared to be 'vice' by them. In other words, no state can be called Islamic if it does not fulfil this fundamental objective of an Islamic State. Thus a state which does not take interest in establishing virtue and eradicating vice and in which adultery, drinking, gambling, obscene literature, indecent films, vulgar songs, immoral display of beauty, promiscuous mingling of men and women, co-education, etc. flourish without let or hindrance, cannot be called an Islamic State. An Islamic Constitution must declare the above mentioned objective as the primary duty of the State.

## VIII

We have been told in the Qur'ān :

"O you who believe, obey Allāh and obey His Messenger and those from among yourselves who hold au-

1. As this is one of the most vexed problems of our age, the reader is requested to study those works of the learned author which deal with this problem in detail. The reader is particularly referred to *Purdah and the Status of Woman in Islam* by Maulana Maududi, Published by Islamic Publications Ltd., Lahore.—Editor.

thority, and if there is any dispute between you concerning any matter, refer it to Allāh and the Messenger, if you (really) believe in Allāh and the Last Day. This is the best course (in itself) and better as regards the result." (4 : 59)

This verse enunciates three most important constitutional principles :

- (1) Muslims are bound to obey Allāh and His Messenger individually and as a community, and this obedience must be given priority to every other obedience. Consequently, obedience to everybody else comes after this and not before that, and it is subject to it and not independent of it.

The following verses and traditions also support the same point :

- (a) "It is not for a believing man or a believing woman to have a say in any affair when it has been decided by Allāh and His Messenger ; and whoever disobeys Allāh and His Messenger, he goes astray manifestly." (33 : 36)
- (b) "Those who do not make decisions in accordance with that which Allāh has revealed are disbelievers . . . unjust . . . transgressors." (5 : 44, 45, 47)
- (c) "A Muslim must listen to and obey the ruler whether he approves of what is ordered or abhors it, provided he is not ordered to commit sin. In that case, he should neither listen nor obey."<sup>1</sup>
- (d) "Even if an ugly and deformed slave is elected as your ruler and he conducts your affairs in accordance with the teachings of the Book and the *Sunnah*, you must listen to and obey him."<sup>2</sup>
- (e) "There is no obedience in sin ; it is only in virtue."<sup>3</sup>
- (f) "There is no obedience for those who disobey Allāh."<sup>4</sup>

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1. Related by *Bukhari* and *Muslim*.

2. Related by *Muslim*.

3. Related by *Bukhari* and *Muslim*.

4. *Tibrani*.

- (g) "There is no obedience to the Creature if it involves disobedience to the Creator."<sup>1</sup>

The above-mentioned injunctions of the Qur'ān and the *Sunnah* definitely point out that in an Islamic State the legislature has no right to make laws, the executive has no right to issue orders and the law courts have no right to decide cases in contravention of the teachings of the Qur'ān and the *Sunnah*; and if they do so, the Muslims have no obligation to obey them. Not only that, the fact of the matter is that if they disobey them, they will be perfectly within their right and will not be committing any sin. Furthermore, if anything is proved to be right in the light of the Qur'ān and the *Sunnah*, it cannot be rejected by any judge or authority on the ground that it is in conflict with any order of the Government or any law enacted by the legislature. In such a case it is that order or the legislative enactment which is in conflict with *Shari'ah*—and not the *Shari'ah*—that should be declared *ultra vires* of the constitution and set aside.

- (2) Muslims alone can be the rulers in an Islamic State. The verse (4 : 59) quoted above clearly lays down : 'obey those from among yourselves who hold authority.' It means that it is the Muslim rulers whom the Muslims have been asked to obey. Moreover, in case of a dispute between the rulers and the ruled both have been ordered to refer the matter to Allāh and His Messenger and it is only a Muslim ruler who can agree to refer the dispute to Allāh and His Messenger.

In addition to this the tradition already quoted also supports the above conclusion.

In another tradition 'Ubādah bin Sāmīt relates that the Holy Prophet took the following pledge from us :

"We will not dispute and fight with our rulers unless we see signs of (such) open disbelief in their deeds which may provide us with a justification from Allāh (to stand

1. *Shark al-Sunnah*.

up) against them.”<sup>1</sup>

Another tradition says that when the Companions asked the Prophet's permission to rise against bad rulers, he replied :

“No (you cannot rebel against them) so long as they continue to establish *Ṣalāt* among you.”<sup>2</sup>

After these clarifications, no shadow of doubt is left that there is absolutely no scope for making any provision in the constitution of an Islamic State for a non-Muslim to become a ruler. And, as a matter of fact, to do so would be as irrational and impracticable as would be a non-Communist's becoming the ruler of a Communist state or a Fascist's becoming the ruler of a democratic state.

- (3) The verse (4 : 59) also gives the people the right to differ with their rulers. In that case, the verdict of Allāh and His Messenger is to be taken as final both by the rulers and the ruled. This implies that there must be some institution for deciding such disputes in the light of the Qur'ān and the *Sunnah*. But the *Shari'ah* does not prescribe any definite form for this purpose. It may be a body of '*Ulamā*' or it may be in the form of a Supreme Court. The verse demands that there must be some institution for this purpose.<sup>3</sup>

## IX

The Qur'ān says :

“Lo ! Allāh commandeth you to repose truth with the trustworthy and when you judge between people, judge justly.” (4 : 58).

“Let not the enmity of any people seduce you from doing justice (to them). Do justice (in every case) for it is nearer to piety.” (5 : 8)

1. Related by *Bukhari* and *Muslim*.

2. Related by *Muslim*.

3. Maulana Maududi has preferred the Supreme Court as the repository of this authority. This is clear from his “Constitutional Proposals”—See Chapter X.—*Editor*.

These verses enjoin the Muslims to do justice individually as well as collectively. An Islamic State is, therefore, bound to be just, for it is the most powerful institution for administering justice among people. If there is no justice in its own affairs, there can be no justice in the society in general.

The Holy Prophet (peace be on him) and his Rightly Guided successors (*Khulafa-e-Rashideen*) also have impressed the importance of doing justice between the people, as for instance :

- (1) In his well-known address on the occasion of his last pilgrimage to Mecca, the Holy Prophet enunciated some fundamental principles of the Islamic State. One of them was :

"Most surely, your life, your property and your honour are as sacred as this day of *hajj* (pilgrimage)."<sup>1</sup>

This declaration of fundamental human rights binds an Islamic State to scrupulously safeguard the life, property and honour of all its citizens.

- (2) At the same time, the Holy Prophet himself has specified as to when this sanctity can be set aside. He says :

- (a) "When people do this (that is, stand witnesses for the sovereignty of Allāh and the truth of Prophethood, establish *Salāt* and pay *Zakāt*), they will save their lives from me (i.e., the State) except when they commit a crime against the law of Islam. And as regards the assessment of their intentions, Allāh alone can be the judge."<sup>2</sup>

- (b) "Their lives and their properties are sacred to us except when they violate the sanctity of the life and property of others and Allāh alone is the judge of intentions."<sup>3</sup>

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1. Related by *Bukhari* and *Muslim*

2. *Ibid.*

3. *Ibid.*

- (c) "Then any one who recites it (the *Kalimah* of *Tawheed*) is entitled to the protection of his life and property so long as he does not make himself liable for their forfeiture before Allāh's (Law) and Allāh alone is the judge of intentions."<sup>1</sup>

These traditions guarantee the sanctity of life, property and honour within the limits of Islamic Law and though, in their context, they refer to Muslims only, it is an agreed principle of Islamic *Shari'ah* that all non-Muslims who live under the protection of an Islamic State are entitled to the same civic rights that the Muslims enjoy.

- (3) As regards the procedure to be adopted for the administration of justice, the Holy Prophet (peace be on him) has laid down the following rule :

"When two persons bring a dispute to you for decision, do not deliver a judgment unless you have given an equal hearing to both of them."<sup>2</sup>

In a case decided by Caliph 'Umar, he makes the following elucidation :

"According to the Islamic Law, none can be imprisoned without (doing full) justice (to him)."<sup>3</sup>

We learn from the details as given in *Muwatta* that, in the newly conquered territory of Iraq, some people began to backbite and make false allegations against one another and in this way, were responsible for sending many persons behind the bars. When such complaints were brought before the Caliph 'Umar, he passed the above order. It meant that no one could be imprisoned without a regular trial in a law court and without giving him full opportunity to defend himself.

- (4) When the *Kharijites* who did not believe in any state, rose in revolt during the *Khilafat* of Caliph 'Ali, he wrote to them :

1. Related by *Bukhari*.

2. Related by *Abu Da'ud*, *Tirmizi* and *Ahmad*.

3. Related by *Malik*, *Muwatta*.

"You may live and move about wherever you like provided you do not shed blood or spread chaos and resort to terrorism. But if you are guilty of any of these, I will go to war against you."<sup>1</sup>

This means that no action would be taken against anyone, whatever political ideas he might hold, so long as he does not try to overthrow the government by violent means.

From these details it must have become perfectly clear that the Islamic conception of justice does not at all allow that the executive be given the powers to arrest or imprison or exile or suppress the rights of belief, opinion, expression of any body without the due process of law that meets the end of justice.

Moreover, we learn from authentic traditions that Islam does not allow any differentiation or discrimination between the rulers and the ruled or the high and the low in matters of law and justice. There is and can be one and the same law, the same procedure and the same courts for all of them. Before his demise, the Holy Prophet (peace be on him) presented his own self for the satisfaction of any claim that any one might have against him. Similarly, Caliph 'Umar forced Jahalah bin Aiham Ghaasani, the ruler of a native state, to satisfy the claim of a common man against him. He also categorically refused to comply with the request of 'Amr bin al-'Ās for legal safeguards for the Governors. Not only that, he gave to everybody the right to sue in ordinary courts any Governor and the highest officers of the State.

## X

The Holy Qur'ān says :

- (a) "In their wealth the beggar and the destitute have their due." (51 : 19)
- (b) "Purify them (of vice) and develop them (in virtue) by taking *Zakāt* from their wealth and pray for them". (9 : 103)

1. Related by Shaukani, *Nail-ul-Awtar*.



The Holy Prophet says :

- (a) "Allāh has made *Zakāt* obligatory upon the Muslims. It is to be collected from the wealthy among them and distributed among their needy ones."<sup>1</sup>
- (b) "The Government is the guardian of any one who has no other guardian."<sup>2</sup>
- (c) "If any one dies while he owes a debt and does not leave behind any property for its payment, then the responsibility for its payment is mine. But if any one leaves any property behind, (the responsibility devolves upon) his inheritors."<sup>3</sup>

According to another tradition :

- (d) Anyone who dies in the debt or leaves behind dependents who are in danger of becoming destitutes, they should come to me because I am their guardian."<sup>4</sup>

In the words of yet another tradition :

- (e) "If anyone leaves behind property, it will go to his heirs, but if anyone leaves behind some liabilities (instead), the burden of their responsibility falls on us (i.e., the State) :"<sup>5</sup>

A similar tradition is related by Abu Da'ud :

- (f) "If a person leaves behind no inheritor, I shall be his inheritor, both for paying off his liabilities and inheriting his property."<sup>6</sup>

These verses and traditions clearly point out that one of the major duties of an Islamic State is to establish the system of *Zakāt* and that it carries on its shoulders the responsibility of providing for all those who are destitute and helpless.

1. Related by *Bukhārī* and *Muslim*.

2. Related by *Abu Da'ud*, *Tirmidzi*, *Ibn Majah*, *Darimi*, *Muṣnad-e-Aḥmad*.

3. Related by *Bukhārī* and *Muslim*.

4. *Ibid*.

5. *Ibid*.

6. Related by *Abu Da'ud*.

## THE LAST WORD

We have presented, in the foregoing pages, some fundamental constitutional principles from the Qur'an and the *Sunnah* for the benefit of those who are interested in the subject. Now it is the duty of general Muslims to study them carefully, from independent opinions of their own and say honestly whether or not these principles can form the basis for the Constitution of an Islamic State. We shall be thankful if anyone proves scientifically and logically that these principles have nothing to do with the Constitution of the State or points out any fundamental constitutional problems (not their details) for which no guidance is available in the Qur'an or the *Sunnah*. If, however, neither of these is possible, only the following two courses remain open for all honest people. Either submit to the demand for Islamic Constitution or say frankly: "We do not recognize the Qur'an and the *Sunnah* as the final authority." To choose a middle course between "*Imān*" and "*Kufr*" is neither honest nor honourable nor fruitful in the long run.

## Chapter 8

### Rights of Non-Muslims in Islamic State

THE question of the rights of non-Muslims in an Islamic State has been one of the most burning questions ever since Pakistan came into being. In 1948 the Constituent Assembly issued a questionnaire to ascertain the opinions of experts as well as of the general public about the position of minorities in Pakistan. Maulana Maududi has discussed the problem from the Islamic viewpoint in this article which appeared in the *Tarjuman al-Qur'an*, in its issue of August, 1948.—*Editor.*

# RIGHTS OF NON-MUSLIMS IN ISLAMIC STATE

## I

**W**HILE discussing the rights of non-Muslims in an Islamic State, it should be clearly borne in mind that an Islamic State is essentially an ideological state, and is thus radically different from a national state. This difference in the very nature of these two types of states has an important bearing on the problem under discussion, and can be best understood by a comparative study of the following points:

(1) An Islamic State classifies the people living within its jurisdiction in the light of their belief or disbelief in the ideology which constitutes the basis of the State. In other words, the people are divided into Muslims (who believe in the ideology of the State) and non-Muslims (who do not believe in that ideology).

(2) It is obvious from the ideological nature of an Islamic State that responsibility to run the State should rest primarily with those who believe in the Islamic ideology. Those who do not believe in the ideology of the State can, no doubt, be asked to cooperate, if they so like,

(1) A national state classifies its citizens into groups of people in accordance with their belonging or not belonging to the nation or race which has established the State in question or which dominates over it and is responsible for running it. Herein the terms 'majority' and 'minority' are used for the two respective groups.

(2) The task of guidance and policy-making in a national state always remains in the hands of the majority community. As for the minority communities (whether social, cultural or religious) of the same nationality, they are not trusted with nor deemed capable of shouldering this

with the Muslims in the task of administration' but they should be neither called upon to undertake nor can be entrusted with the responsibility of policy-making.

(3) An Islamic State, as already stated, is by its very nature bound to distinguish between Muslims and non-Muslims and it, in an honest and upright manner, not only publicly declares this state of affairs but also precisely states as to what rights will be conferred upon its non-Muslim citizens and which of them will not be enjoyed by them.

(4) To solve the problems arising out of the presence of non-Muslims (i.e., the people not subscribing to the basic principles of the State) within

responsibility. This position may not be explicitly declared or even admitted. Nay, the constitution of the country may categorically abolish all discriminations amongst the citizens but that is what is in vogue practically in every national state. Even if any member of the minority community is entrusted with any keypost, it is almost always a subterfuge or as a special deal with an individual. In reality the minorities have nowhere any say in important matters of the State.

(3) On the other hand, a national state can and in practice does follow the hypocritical policy equating all its citizens on paper and still actually retaining the unfair discrimination between the majority and the minority. Nobody can deny the fact that the minorities are almost everywhere deprived of even their basic human rights in the so-called modern national states.

(4) A national state, on the other hand, generally adopts any one or more of the following courses for the solution of its minority problem :

its boundaries, an Islamic State guarantees them certain specifically state rights. Beyond those rights it does not permit them to meddle with the affairs of the State which is based on an ideology to which they honestly do not subscribe. Nevertheless, as Islam does not believe in false distinctions of race, colour, or territory, it always keeps the door open for them to embrace Islamic principles of life and become equal participants in all matters concerning the State and the government.

(5) An Islamic State is bound to confer all those rights on its non-Muslim citizens which have been conferred upon them by the Islamic *Shari'ah*. No one has the right to effect the slightest curtailment in them<sup>1</sup>. Muslims have, however, been empowered to confer upon them additional rights subject only to their not being repugnant to the teachings of Islam.

(i) to gradually destroy the separate entity of the minority community ;

(ii) to exterminate it physically by means of genocide; or

(iii) to allow them to exist, as untouchables.

All these three methods have been and are still being largely employed by national states all over the world. Muslims of India are now having a very bitter experience of this solution of minority problem.

(5) Whatever rights are actually granted to the minority under a national state, depend on the sanction of the majority. Thus the fate of the minorities depends on the whims and caprices of the majority who always has the power to curtail them and even to deprive them at will of even the fundamental human rights.<sup>2</sup>

1. Hence the word "*Zimmis*" which literally means "guaranteed."

2. Foreign reviewers and critics have particularly criticized this discussion over the approach and policy of a national state and have described it as inaccurate and even "burlesque."

These five points of distinction show very clearly how Islam treats its non-Muslim subjects and how a national state treats its racial and cultural minorities. If these distinctions are ignored, one cannot escape falling a prey to many a misunderstanding due to the hypocritical pretensions of the present-day national states of granting equal rights to all

But this criticism of theirs is totally unfounded. The description of national minorities given by the author is based on most authentic sources. We would refer the learned critics to see C. A. Macartney, *National States and National Minorities*, wherein the author, on unimpeachable evidence, describes the fate of national minorities in national states. He observes:

"A national state and national minorities are incompatible. Where fate has put a nationally conscious minority in a state, there are only three possible solutions and (although few governments believe this) forcible denationalization is not one of them. Perhaps fourth should be counted physical slaughter; but although this effective of all remedies is still in vogue in certain countries, it shall not be discussed here. The three possibilities which can be considered are: either the theoretical basis and existing populations may be left untouched, but the frontiers may be revised in such a way as to leave the alien elements outside them; or the bases of the State may be retained, and its frontiers left intact, but the minorities may be eliminated by emigration (perhaps through exchange of population); or thirdly, existing population and frontiers may be retained, but the basis of the State may be altered." (p. 423)

This is the theoretical position, but in practice, the second (i.e., elimination by migration) and the fourth (i.e., physical extermination) remedies have usually been adopted. An idea of the position of minorities can be had from the following extract from the above-quoted book of Prof. Macartney who acted as Secretary to the Minorities Committee of the League of Nations:

"The minorities say: Our charter of liberties is thus blatantly inadequate. It represents only a fraction of our minimum needs. But even these have been made a dead letter, our Governments have violated their treaties again and again. They have deprived us of our land, our schools, our churches, and the League has let them do it. It has winked at flagrant violations of the Treaties. It has put us off with measly-mouthed resolutions about our duties...The mere fact

[Contd.]

citizens of the State on paper on the one hand and leaving none of them unviolated in practice on the other.

We now revert to the problem under consideration.

## II

### THE CLASSIFICATION OF NON-MUSLIM CITIZENS

The Islamic *Shari'ah* divides its non-Muslim citizens into three categories, viz.

(a) Those who become the subjects of an Islamic State under some treaty or agreement ;

(b) Those who become its subjects after being defeated by the Muslims in a war, and

(c) Those who are there in the Islamic State in any other way.

So far as the general rights of non-Muslims (i.e., the fundamental human rights) are concerned, all are treated alike.

that from the inauguration of the League procedure up to February 1931 no less than 525 petitions had been submitted to the League (excluding those submitted under the Upper Silesian procedure) indicate no healthy state of things.....It is, moreover, notorious that certain of the minorities whose case has been the most dismal have been afraid to petition the League at all for fear of incurring reprisals ...the subject-matter of the petitions which have been received ranges from comparatively trivial cases of insulting words to cases of raping, torture and murder ; from injustices inflicted on individuals to the systematic oppression of communities hundreds of thousands and even millions strong (pp. 381-384).

The author admits in clear words that :

"Generally speaking, the fate of minorities has been one of suffering. Almost every state has committed, and every minority suffered under, flagrant violations of the Minority Treaties. And these have been committed, to all intents and purposes, with impunity," (p. 390). (Emphasis mine)

Other authorities can also be quoted in support of the bitter facts presented above—*Editor*.



However, the respective instructions relating to the first two groups being slightly different from each other as well as from those concerning the third group, we propose to deal first with the specific instructions relating to groups (a) and (b) before embarking upon a discussion on the general rights of all *Zimmis*.

### "Contractees"

For those who accept the hegemony of an Islamic State without or even during a war, and enter into a specific contract with it. Islam prescribes that all matters relating to them should invariably be decided in accordance with the terms of the treaty or agreement. To offer generous treatment to opponents in order to persuade them to lay down arms and then to throw them overboard, is the everyday practice of all the so-called civilized nations of the world; but it militates against the injunctions of Islam which cannot brook such deception. Islam considers such feats of strategy as fraudulent and mean and prohibits them totally. It enjoins that once the terms have been settled with any group or community, they must be fully adhered to, even if they seem to be distasteful later on. Muslims are bound by their faith to abide by them and to carry them out in letter and spirit. The Holy Prophet (peace be on him) has clearly enjoined :

"If you fight against a people and overpower them, and they agree to pay a fixed indemnity or annual revenue (*kharaḥ*) to you in order to save their lives and those of their progenies, then do not take a penny more than the fixed amount, because that will not be valid."<sup>1</sup>

"Beware ! whoever is cruel and hard on such people (i.e., "contractees") or curtails their rights, or burdens them with more than they can endure, or realises anything from them against their free-will. I shall myself be a complainant against him on the Day of Judgement."<sup>2</sup>

1. Related by *Abu Da'ud*, *The Book of Jihad*,

2. *Ibid*.

These injunctions of the Holy Prophet (peace be on him) clearly and unambiguously proclaim that no arbitrary change or alteration is permissible in the terms and conditions of any agreement that is entered into with the *Zimmis*. Neither can the amount of their annual levy be arbitrarily increased nor their lands and their buildings be confiscated against that agreement. Besides that they cannot be subjected to undue and harsh treatment and their religion and their personal law shall remain immune from state interference. Their lives, honour and property are as sacred as those of the Muslims. Their rights cannot be curtailed, nor can they be tyrannized. They are not to be deprived of their lawful belongings, nor made to bear a burden which is beyond their capacity.

Thus, in the case of the contracted non-Muslims the fundamental principle is that the relations between them and the Islamic State shall be based on the terms of the agreement. As such no specific laws have been formulated by the Muslim jurists in regard to the treatment to be meted out to them except laying down the general rule that such non-Muslims should be treated according to the terms of the agreement or the treaty that might have been entered into. Imam Abū Yūsuf<sup>1</sup> writes :

"We shall take from them only what was mutually fixed at the time of peace-making. All terms of the treaty shall be strictly adhered to and no additions would be permitted."<sup>2</sup>

### The "Conquered"

People who continue to fight against the Muslims till they

1. Imam Abu Yūsuf was one of the greatest Jurists of Islam. He was the Chief Justice of the Abbasid empire during the reign of Harun al-Rashid. He was the chief disciple of the great legist, Imam Abū Hanifa and he has been regarded, throughout Muslim history, as an authority on Muslim Law. His great work, *Kitāb al-Kharāj* is counted as one of the source-books on the Hanafite law.—Editor.
2. Abu Yūsuf, *Kitāb al-Kharāj*, Cairo, p. 35.

ere overpowered and lay down arms only when Muslim armies have entered their cities and towns as conquerors, come under this second category. When such people are made *Zimmis*, they are given certain specific rights, details of which can be found in all the standard books on this subject. Here we state briefly all those relevant injunctions on this point, which explain the constitutional status of *Zimmis* belonging to this category :

- (a) As soon as the State accepts *Jizyah* from them, it becomes the obligatory responsibility of every Muslim to protect their lands and properties and their life and honour. The acceptance of *Jizyah* establishes the sanctity of their lives and property, and, thereafter, neither the Islamic State nor the Muslim public have any right to violate their property, honour or liberty. 'Umar, the second Caliph, clearly enjoined Ahl 'Ubaydah, the Commander-in-Chief of Islamic armies, as follows :  
 "The moment you accept *Jizyah* from them you forego the right to take liberties with them or with their properties."
- (b) After the agreement the *Zimmis* continue to enjoy the ownership of their properties and their heirs have full rights of inheritance in it. They possess full power of sale, transfer, grant and mortgage in respect of all such properties and the Islamic State has no right to dispossess them of any of these rights.
- (c) The amount of *Jizyah* is to be fixed in accordance with their financial position. Those who are rich have to pay more, while those who belong to the middle class pay less, and the least amount is charged from the poor class. Those who are destitutes and do not have any fixed source of income or depend on others for their livelihood, are completely exempted. No fixed amount has been prescribed for *Jizyah*, and it has been enjoined that only that much should be taken which does not involve undue hardship in payment. Caliph

'Umar in his time, fixed the amounts which were equivalent to rupee one<sup>1</sup> per month for the rich people, fifty paises per month for the middle classes and only twenty-five paises per month for the poor.

- (d) *Jizyah* is levied only on those who have actually fought against Muslims or who are able-bodied and can participate in a war against Islam. Noncombatants like women, children, Ionatics, blind, lame, age-stricken or physically disabled persons are exempt from *Jizyah*. Similarly the clergy, the monks and the servants of the monasteries are exempt therefrom.<sup>2</sup>
- (e) Muslims do have right to confiscate the places of worship in such towns as have been taken by storm. But to forgo this right willfully and to allow such places of worship to remain intact as a gesture of good will, is generally held to be more pious. In all the countries conquered in the days of Caliph 'Umar, not a single place of worship was ever desecrated or interfered with. Abū Yousuf writes :  
 "All such places of worship were left as they were. They were neither razed to the ground nor were the conquered deprived of their goods or property".<sup>3</sup>

Ancient places of worship are never permitted to be destroyed.

### III

#### GENERAL RIGHTS OF THE *ZIMMIS*

We will now discuss those rights of the *Zimmis* which cover all the three groups categorised above.

The blood of a *Zimmi* is considered as sacred as that of a

1. A rupee is approximately equal to 4.5 pence and there are 100 paises in a Rupee.—*Editor*.
2. See: Kamaluddin Ibn Hammam, *Fatah al-Qadir* and Abū Yousuf, *Kitab al-Kharaj*.
3. Abū Yousuf, *Ibid*.

Muslim. If a Muslim kills a *Zimmi*, retribution and restitution will have to be made just as for killing a Muslim. A Muslim killed a *Zimmi* in the days of the Holy Prophet (peace be on him).

The Holy Prophet ordered his execution saying :

"I am responsible for obtaining redress for the weak".<sup>1</sup>

In the days of Caliph 'Umar a person of the tribe of Bakr bin Wa'il killed a *Zimmi* of Hira'. The Caliph ordered that the murderer be handed over to the kith and kin of the deceased. This was done and the successors of the deceased executed him.

During the reign of 'Uthman, the third Caliph, an order was issued for the execution of Obaidullah, son of Caliph 'Umar because he was said to have killed Harmuzan, the assassin of 'Umar and the daughter of Abū Lala under the impression that they had conspired to murder his illustrious father. Both of them were *Zimmis*.

In the days of 'Ali, the fourth Caliph, a Muslim was accused of murdering a *Zimmi*. The charge being proved, 'Ali ordered the execution of the Muslim. The brother of the deceased submitted, however, that he had forgiven him. But 'Ali was not satisfied and that perhaps the people had threatened him. It was only when the brother of the deceased sought pardon for the murderer, persistently insisting that he had received the blood-money and that the deceased would not return to life by the execution of his murderer, then and only then did 'Ali gave his consent to release the murderer and said :

"Whosoever is our *Zimmi* his blood is as sacred as our own and his property is as inviolable as our own property."

In another reference, 'Ali is reported to have said : "They have accepted the position of *Zimmis* on the explicit understanding that their properties and their lives will remain sacred like those of ours, i.e., of the Muslims)".

That is why the Muslim jurists have inferred that if a

Muslim, even unintentionally, kills a *Zimmi*, similar compensation must be paid as is fixed in the case of the unintentional murder of a Muslim.

### *Zimmis and the Criminal Law*

The Penal Laws are the same for the *Zimmis* and the Muslims and both are to be treated alike in this regard. The *Zimmis* are subjected to the same penalties as are the Muslims. Thus, for instance, whether, it is a *Zimmi* who steals or a Muslim, the hands of the thief will be chopped off in both cases. Similarly, whether it is a *Zimmi* or a Muslim who levels an unproved charge of adultery against any male or female, the same punishment would be meted out to both. The punishment for adultery is also the same in both cases. In the matter of drinking wine, however, the *Zimmis* are exempt from punishment.<sup>1</sup>

### Civil Laws

The Civil Laws, too, are the same for both the *Zimmis* and the Muslims. There is thus complete equality between them in this respect. In fact, this was exactly what 'Ali meant when he said that their properties are as sacred as are the properties of the Muslims. A natural corollary of this equality of status is that whatever restrictions are placed on the Muslims under the Civil Laws, the same are applicable to the *Zimmis*.

Whatever objects, forms and means of trade are prohibited for the Muslims, the same are also prohibited for the *Zimmis*. For instance, interest is unlawful (*haram*) for the Muslims and similarly it is unlawful for the *Zimmis*. But in the case of drinking wine and eating pork the *Zimmis* are free to take them. They can prepare, drink and deal in wine and they can also rear, eat and sell pigs. Not only that, if any Muslim harms

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1. According to Imam Malik, the *Zimmis* are exempt from the punishment for adultery also. He infers this from the decisions of 'Umar and 'Ali which lay down that if a *Zimmi* commits adultery his case should be referred to his co-religionists,

or destroys their liquor or their pigs, he will be made to pay compensation for that loss. According to the *Durr al-Mukhtar* :

"If a Muslim spoils the wine of a *Zimmi* or harms his pigs, he will have to pay for them".<sup>1</sup>

### Protection of Honour

To assault, injure or abuse a *Zimmi* or even to backbite him is considered just as immoral as is doing such things in respect of a Muslim. According to the Islamic Law :

"It is imperative for Muslims to refrain from causing inconvenience to a *Zimmi* and to backbite him, for backbiting a *Zimmi* is as much prohibited as is to backbite a Muslim".<sup>2</sup>

### The Inviolability of Guarantees

The responsibility which Muslims take upon themselves in respect of non-Muslims, has an abiding value and they are not permitted to break the bond. But the *Zimmis* have, on the contrary, the right to renounce it as and when they like. According to the Muslim legists, so far as Muslims are concerned, the responsibility of *Zimmis* if once accepted becomes obligatory and it cannot be forsaken. But for the *Zimmis*, it is discretionary, i.e., if they desire to forego it, they can do so.<sup>3</sup>

A *Zimmi* may commit the greatest of crimes and yet it will not disqualify him from being treated as a *Zimmi*. Even if he refuses to pay the *Jizyah* or kills a Muslim or abuses the Holy Prophet (peace be on him) or attacks the honour of a Muslim woman, he will not be considered to have lost his right of protection. He will only be punished for the crime he commits but he will not be declared a rebel, nor deprived of the privileges accorded to him as a *Zimmi*. There are only the

1. Alauddin, *Durr al-Mukhtar*. It is an authentic collection of the judgments and *fatwas* (verdicts) of the Hanafi school of thought.—*Editor*.

2. Alauddin, *Durr al-Mukhtar*.

3. Alauddin Abū Bakr bin Sa'ud al-Kasāni, *Bada'i' al-Sanai'* ; a source-book of the Hanafi school of Islamic Law.—*Editor*.

following two crimes which deprive the *Zimmis* of their right to protection, namely :

- (1) When they leave the Muslim State and go over to its enemies, and
- (2) When they openly revolt against the State and try to overthrow it.

### Personal Law

All personal matters of the *Zimmis* are to be decided in accordance with their own Personal Law. The corresponding law of *Shari'ah* are not to be enforced on them. If anything is prohibited for the Muslims in their Personal Law but the same is not forbidden to the *Zimmis* by their religion, they will have the right to use that thing and the courts in the country will decide their cases in the light of their Personal Law. For instance, marriage without witnesses and without fixation of *Mehr* (dower money) or marriages within the period of *'Iddat*,<sup>1</sup> or marriages in contravention of consanguinity, if permitted in the Personal Law of the *Zimmis*, will be allowed to stand. This has been the rule of all Muslim Governments since the days of the early Caliphs, 'Umar bin 'Abd al-'Aziz once asked for *fatwa* in this respect from Hasan al-Baari, saying :

"How is it that the Caliphs left the *Zimmis* free in the matters of marriages regardless of consanguinity and in the matters of drinking wine and eating pork ?"

Hasan replied :

"The *Zimmis* accepted to pay *Jizyah* only because they wanted to be free to live in accordance with their own Personal Law. You have only to follow what your predecessors did. You are not to deviate or to innovate".

But if from amongst the *Zimmis* both the parties request that their disputes be decided in the light of the Islamic

1. This period is normally four months and ten days. In the case of pregnancy, it extends to and expires on delivery.



*Shari'ah*, the Islamic Courts will enforce the *Shari'ah* on them. Further, if in a matter of Personal Law, one of the parties is a Muslim, the case will have to be dealt with in accordance with the Islamic *Shari'ah*. For instance, if a Christian woman marries a Muslim and becomes a widow, she cannot be permitted to marry until the expiry of the full period of 'Iddat. If she does so, such a marriage would be regarded as null and void.<sup>1</sup>

### Religious Rites

The Islamic Law and practice regarding the public performance of religious rites and communal festivals by the *Zimmis* are equally generous. In their own towns and cities, they are allowed to do so with the fullest freedom. In purely Muslim habitations,<sup>2</sup> however, an Islamic Government has full discretion to put such restrictions on their observance as it deems necessary.

In *Bada'i* it is said :

"In localities not covered by the term 'purely Muslim habitations', the *Zimmis* will not be stopped from selling wine or pork or from taking out processions of the Cross or from blowing conches, although the number of Muslim inhabitants therein may not be negligible. These matters will, however, be considered objectionable in towns and places which may be termed as 'purely Muslim habitation' i.e., those where Friday and 'Id congregations are held".

"Regarding acts which are prohibited by their codes also, for instance adultery, they are to be restrained from committing them even within the limits of their own towns and habitations".<sup>3</sup>

1. *Al-Mabrut*, Vol. V, pp. 38-40.

2. "Purely Muslim habitations" is a translation of the technical term of the *Shari'ah* "*Amsar al-Muslimin*." This word connotes habitation on lands owned by Muslims and consecrated for demonstrating the glory and supremacy of the Islamic way of life.

3. Alaaddin Abû Bakr, *Bada'i al-Sanâ'i*, Vol. VII, p. 118.

And even in purely Muslim cities and towns, they are only restricted from taking out public processions of the Cross and of the idols and from openly blowing conches in the markets and along the roads. Within the boundaries of their own places of worship, they can perform all these rites and no Islamic Government will interfere therein.<sup>1</sup>

### Places of Worship

Even in purely Muslim areas, the non-Muslim places of worship built in the past are not to be interfered with, and if they are damaged or destroyed, the *Zimmis* have the right to rebuild or repair them. But they are not entitled to build new places of worship in these areas. In places which are not purely Muslim area, there is no such restriction on them. Similarly, in those cities and places which may have previously been purely Muslim areas, but have ceased to be such areas and where Friday and 'Id congregational prayers and enforcement of *hudud* are no longer in vogue, the *Zimmis* can build new places of worship and demonstrate the performance of their religious rites.<sup>2</sup>

Ibn 'Abbas has said :

"In towns founded by the Muslims, the *Zimmis* have no right to build new places of worship or to blow conches in the market or on roads or to sell wine or pork openly. But in cities originally established by non-Muslims and only subsequently conquered by the Muslims, the right of the non-Muslims will be decided in accordance with a treaty and it is obligatory on the Muslims to abide by it".<sup>3</sup>

### Concession in the Realisation of *Jizyah* and *Kharaj*

The use of violence and coercive methods in the realisation of *Jizyah* or *Kharaj* is prohibited and kindness and benevolence are enjoined in this respect. It is also forbidden to impose

1. *Sharah al-Siyaf al-Kabir*, Vol. III, p. 251.

2. *Badā'ī*, Vol. VII, p. 144 ; *Sharah al-Siyar al-Kabir*, Vol. III, p. 557,

3. Abū Yousuf, *Kitab al-Kharaj*, p. 88.

amounts which may be beyond their means. Caliph 'Umar had clearly ordered that they should not be made to pay more than what they could actually afford.<sup>1</sup>

And even for that are not to be put to any undue inconvenience. Thus, their properties cannot be auctioned in case of failure to pay *Jizyah*. Caliph 'Ali himself directed one of his governors not to auction or sell their apparel or cattle for the realisation of *Kharaj*.<sup>2</sup> On another occasion he gave the following instructions to one of his governors at the time of deputing him for his office :

"Their winter and summer apparel, their utensils and agricultural implements and their cattle should not be sold to realise *Kharaj*, nor should anybody be beaten or kept standing in the sun, nor should any of their properties be auctioned for this purpose. Now that we have been made their rulers we should treat them with mildness and leniency. If you disobey these orders of mine, God will take you to task for it, and if I learn of your disobedience, I shall remove you from office".<sup>3</sup>

In the realisation of *Jizyah* also, every form of coercion is strictly forbidden. In his directive to Abû 'Ubalah, the Governor of Syrie, Caliph 'Umar said that Muslims should not be permitted anyway to harm the *Zimmis* or put them to inconvenience or illegally deprive them of their properties'.<sup>4</sup>

When, during his journey to Syria, Caliph 'Umar learnt of governor's punishing the *Zimmis* for non-payment of *Jizyah*, he said :

"Do not chastise them, for if you do so, God Almighty will do the same to you on the Day of Judgment".<sup>5</sup>

Hishem bin Hakam found a Government officer punishing a *Qibti* for failure to pay *Jizyah* by making him stand in the

1. *Ibid.*, pp. 8, 32.

2. *Fath al-Bayan*, Vol. 4, p. 93.

3. Abû Yousuf, *Kitab al-Kharaj*, p. 9.

4. *Ibid.*, p. 82.

5. Abû Yousuf, *Kitab al-Kharaj* p. 71.

sun. He scolded him and said :

"I have heard the Prophet (peace be on him) saying that God will obstise (in the Hereafter) those who chastise human beings in this world".<sup>1</sup>

In regard to the defaulters of *Jizyah*, the Muslim Jurists have permitted the awarding of only simple imprisonment as a corrective measure.<sup>2</sup>

Those *Zimmis* who become bankrupt, are not only exempt from the payment of *Jizyah*, but are entitled to help from the *Bait al-Mal* (State Exchequer). Khālid bin Walid, in his famous "Covenant of Peace" given to the people of Hira, wrote :

"I have stipulated that if any one of them becomes unfit to work on account of old age or some other cause, or if anyone who was formerly rich becomes so poor that his co-religionists have to support him by giving him alms, such persons will be exempt from paying the *Jizyah* and they, together with their dependents, will be helped from the Islamic Treasury (*Bait al-Mal*)".<sup>3</sup>

Once Caliph 'Umar noticed an old *Zimmi* begging in the streets. He asked him as to the reason for doing so. The *Zimmi* replied that he did so in order to be able to pay the *Jizyah*, whereupon the Caliph exempted him from its payment, sanctioned a pension for him and directed his Treasury Officer in the following words :

"By God, it is undoubtedly not just that we derive benefit from a person in the prime of his youth but leave him to beg in the streets when he is stricken with old age".<sup>4</sup>

During his journey to Damascus, Caliph 'Umar ordered the fixation of pensions for the invalid and the aged *Zimmis*.<sup>5</sup>

1. Abu Da'ud, *Kitab al-Kharaj*, *Baah al-Faq' wa al-Imarah*.

2. *Ibid.*, p. 70.

3. *Ibid.*, p. 85.

4. *Ibid.*, p. 72 ; *Fath al-Qadir*, Vol. 4, p. 273.

5. *Futuh al-Buldan* (European edition), p. 129.

If any *Zimmi* dies leaving arrears of *Jizyah*, those arrears cannot be realised from the property he has left nor can they be claimed from his successors. Abū Yousuf writes :

"If any *Zimmi* has to pay *Jizyah* and dies before paying it, the same will not be realizable from his successors nor from the property left by him".<sup>1</sup>

### Trade Tax

*Zimmi* traders also have to pay a trade-tax as is charged from the Muslim traders on trade goods of the value of 200 *dirhams* or more or if they own 20 *mithqals* or more of gold.<sup>2</sup> No doubt, in the beginning, the Jurists levied 5% trade-tax on *Zimmi* business-men whereas only 2½% was realised from the Muslim traders. This was, however, not on the basis of any Qur'anic injunction but solely on the exigencies of time. The position was that Muslims had been mostly busy in the defence of the country and business had almost entirely passed into the hands of the *Zimmis*. The tax was reduced in the case of Muslim traders only to encourage and protect them from undue competition.

### Exemption from Military Service

*Zimmis* have been exempted from military duty, because the defence of State against its enemies has been made the responsibility of its Muslim population only. Evidently only those people who believe in the basic ideology of the State sincerely can and should fight for its protection. Again, only the believers in that ideology can be expected to honour the moral principles which have been prescribed by Islam for warfare. Others can fight for it only as mercenaries and, consequently, they cannot be expected to observe the Islamic ethical code in the heat of the battle. These are the main reasons

1. Abū Yousuf, *Kitab al-Kharaj*, p. 70; *Al-Mabsut*, Vol. X, p. 81.

2. *Ibid.*, p. 70. But this ceiling for trade goods or ownership can be revised. It was fixed with respect to the conditions prevailing at the time.

why the *Zimmis* have been exempted from military service and have only been enjoined to pay their monetary share in the defence of the State. *Jizyah* is thus not only a symbol of loyalty to the State but it is also the contributory compensation for exemption from military service, and that is why it is imposed only on males, capable of military service. Whenever Muslims are unable to protect the *Zimmis*, the *Jizyah* and *Kharaj* that might have been realized from them, have to be returned.<sup>1</sup> At the time of the battle of Yarmuk, when the Romans gathered huge armies to fight against the Muslims and the Muslims had to forego their occupation of most of the towns of Syria in order to concentrate at a single point, Abū 'Ubsaidah, the Commander-in-Chief, ordered his subordinates to return the *Jizyah* and the *Kharaj* already realised from the *Zimmis* and to inform them that as the Muslims were unable to protect them, they were returning whatever they had realised from them. It need hardly be added that all officers promptly did so. Balazuri, describing the reactions of the non-Muslim population of these

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1. For a detailed discussion on this subject refer to : *Mabrut*, Vol. X, pp. 78-79 ; *Hadsya, Kitab al-Siyar fi Kaifiyat Qiyamat al-Ghazawm and Baab al-Jizyah* ; *Fath al-Qadir*, Vol. 1V, pp. 827-28 and pp. 369-70.

It should, however, be remembered that if the *Zimmis* offer their services voluntarily in case of war, the persons doing so will be exempted from payment of *Jizyah*. Furthermore, the fact that should also be kept in view in this respect is that the obnoxiousness that the non-Muslims generally feel by the very mention of the term *Jizyah*, is the result of persistent, baseless propaganda that the antagonists of Islam have been carrying on for the last so many centuries. As a matter of fact there is absolutely no basis for this feeling. *Jizyah* is the consideration for the protection and the safeguard of their rights that an Islamic State guarantees to the non-Muslims. Then, this is realised from the able-bodied adult males only. The people who mischievously call it 'a fine for not accepting Islam', can be pertinently asked : what name will they give to *Zaka* which is charged from all adult Muslims—males as well as females—and the rate of which is much higher than that of *Jizyah* ? Is that the 'fine for accepting Islam' ?

towns, writes that when the Muslims refunded the amounts of *Jizyah* in Hums, the people unanimously declared :

"We prefer your Government and its keen sense of justice to the cruelty and injustice of our own co-religionists and we are not going to allow their agents to enter the gates of the city unless we are overpowered by them".<sup>1</sup>

## IV

### MUSLIM JURISTS AND THE *ZIMMIS*

In the foregoing pages we have briefly discussed the details of some of the laws which were adopted to protect the rights and privileges of non-Muslims in an Islamic State. Before proceeding further we wish to stress that under all Muslim governments since the days of the Righteous Caliphs, whenever any injustice were perpetrated on the *Zimmis*, the Muslim Jurists stood up with one voice to champion their cause and they emphatically condemned all such acts of high handedness. A well-known event of history is that the Umayyad Caliph Walid bin 'Abd al-Melik had forcibly incorporated a portion of a Cathedral in Damascus into his mosque. When 'Umar bin 'Abd al-'Aziz became the Caliph, the Christians reported this to him and he at once wrote to the governor of the province to demolish those portions of the mosque which stood on the land of the Cathedral and to hand it over to the Christians.<sup>2</sup>

Walid bin Yazid, fearing a Roman attack, had exiled the *Zimmi* of Cyprus to Syria. Muslim Jurists and the Muslim public protested strongly against the measure and condemned it as a great sin ; so much so that when his son Yazid bin Walid became Caliph, he had to send back all the exiles to Cyprus, for which he was highly praised both by his friends and foes. Ima'il bin 'Ayyash has mentioned this. He says :

1. *Futuh al-Buldan* (European ed.), 137.

2. *Ibid.*, p. 132.

"Muslims in general dissociated themselves from this act and all well-known Jurists declared it to be a great sin. And when Yazid bin Walid became Caliph and sent them back to Cyprus, Muslims generally approved of it and praised him for being just and good".<sup>1</sup>

Balaznri tells us that once some of the hill tribes of Lebanon rose in revolt against the State. Thereupon, the governor, Saleh bin 'Ali bin 'Abdullah, despatched an army to crush it and the army put all the male combatants of the revolting band to death. As for the citizens, he exiled some of them and allowed the remaining to live there. Imam Anza'i was alive in these days. When he learnt of it he reprimanded Saleh vehemently. The following extract from the letter that he wrote to him speaks for itself :

"*Zimmis* of the hill-tracts of Lebanon have been exiled and you know the fact. Amongst them are men who had not taken part in the revolt. I fail to understand why common people should be punished for sins of particular individuals and be deprived of their homes and properties. The Qur'anic injunction is quite clear that ultimately everybody will have to account for his own actions and nobody shall be held responsible for anybody else's actions. This is an eternal and universal injunction, and the best advice therefore, that I can give to you is to remind you of one of the directives of God's Prophet (peace be on him) that he himself will stand up as complainants against all such Muslims who are unkind to those non-Muslims who have entered into an agreement with them and tax them beyond endurance".<sup>2</sup>

History is replete with countless instances of the same nature, which go to show that Muslim Jurists—the same people who are now-a-days called "*Munlis*"—have always stood for the rights of *Zimmis*, and if at any time the rulers dared to be cruel to them, they as well as all the '*Ulamā*' of the age invariably

1. *Futuh al-Buldan*, p. 156.

2. *Ibid.*, p. 169.



stood up to defend the rights of the *Zimmis* and to condemn such action in the strongest possible terms.

## V

### ADDITIONAL RIGHTS AND PRIVILEGES

So far we have referred to those inalienable rights which must necessarily be bestowed upon the *Zimmis* by an Islamic State, as they have been conferred upon them by the Islamic *Shari'ah*. Muslims are not entitled to entail them in any way whatsoever. They are, however, permitted to grant them other rights and privileges to an extent that is not repugnant to the spirit or the commandments of the *Shari'ah*.

Here we attempt to lay down some additional rights that may be granted to the non-Muslim subjects of an Islamic State :

#### (1) Political Representation

Let us take the matter of elections first. An Islamic Government is an ideological Government. Therefore it cannot afford to indulge in the deceptive measures which are commonly employed by secular national states with regard to the rights of national minorities. The Head of an Islamic State is bound by law to conduct the administration of the State in accordance with the Islamic principles and the primary function of *Shura* (Council) is to assist him in doing so. It is thus obvious that those who do not accept the ideology of Islam as their guiding light cannot become the Head of the Islamic State or the members of the *Shura* (Council).

However, in regard to a Parliament or a Legislature of the modern conception, which is considerably different from the *Shura* in its traditional sense, this rule could be relaxed to allow non-Muslims to become its members provided that it has been fully ensured in the constitution that :

- (i) It would be *ultra vires* of the Parliament or the Legislature to enact any law which is repugnant to the Qur'an and the *Sunnah*.

- (ii) The Qur'ân and the *Sunnah* would be the chief source of the public law of the land.
- (iii) The Head of the State or the assenting authority would necessarily be a Muslim.

With these provisions ensured, the sphere of influence of non-Muslim minorities would be limited to matters relating to the general problems of the country or to the interests of minorities concerned and their participation would not damage the fundamental requirements of Islam.

It is also possible to permit the sitting up of a separate representative Assembly for all non-Muslim groups in the capacity of a Central Agency through which all the demands for their collective needs may be submitted to the Parliament. The membership and voting rights of such an Assembly will be confined to non-Muslims and they would be given the fullest freedom within its framework. Through this agency :

- (a) they may exercise the right to propose law in connection with their Personal Law and the amendments thereto. All such proposals and amendments could be placed on the Statute-Book after receiving the assent of the Head of the State ;
- (b) they may submit representations, objections, suggestions etc., with the fullest freedom in regard to the general administration of the Government and the decisions of the Parliament. The Islamic Government would be bound to consider them sympathetically and justly ;
- (c) they will be allowed to raise questions with regard to matters relating to their specific groups as well as the problems affecting the State as a whole. A representative of the Government may always be there to furnish replies to all such questions.

## (2) Freedom of Expression

In an Islamic State all non-Muslims will have the same freedom of conscience, of opinion, of expression (through words

spoken and written) and of association as the one enjoyed by the Muslims themselves, subject to the same limitations as are imposed by law on the Muslims. Within those limitations, they will be entitled to criticise the Government and its officials, including the Head of the State.

They will also enjoy the same rights of criticising Islam as the Muslims will have to criticise their religion.

They will likewise be fully entitled to propagate the good points of their religion and if a non-Muslim is won over to another non-Islamic creed there can be no objection to it. As regards Muslims, none of them will be allowed to change creed. In case any Muslim is inclined to do so, it will be he who will be taken to task for such a conduct and not the non-Muslim individual or organization whose influence might have brought about this change of mind.

The *Zimmis* will never be compelled to adopt a belief contrary to their conscience and it will be perfectly within their constitutional rights if they refuse to act against their conscience or creed, so long as they do not violate the law of the land.

### (3) Education

They shall naturally have to accept the same system of education as the Government may enforce for the whole country. As regards religious education, however, they will not be compelled to study Islam, but will have the right to make arrangements for imparting knowledge of their own religion to their children in their own schools and colleges or even in the National Universities and Colleges.

### (4) Government Service

With the exception of a few keyposts all other services will be open to them without any prejudice. The criteria of competence for Muslims and non-Muslims will be the same and the most competent persons will always be selected without any discrimination.

A list of keyposts can be easily drawn up by a body of experts. We can only suggest as a general principle that all posts connected with the formulation of State policies and the control of important departments should be treated as keyposts. In every ideological state, such posts are invariably given only to such persons who have the fullest faith in its ideology and who are capable of running it according to the letter and the spirit of the ideology. With the exception of these keyposts, however, all other posts will be open to the *Zimmis*. For instance, nothing can debar them from being appointed as Accountant-General, Chief Engineer or Postmaster-General of an Islamic State.

Likewise in the army, only the posts relating to actual warfare should be treated as keyposts, while other appointments, not directly connected with the conduct of war, can be thrown open to the *Zimmis*.

### (5) Trade and Profession

In an Islamic State, the doors of industry, agriculture, trade and all other professions are open to all, and Muslims have no special privileges over non-Muslims in this regard, nor are the non-Muslims debarred from doing that Muslims are permitted to do. Every citizen, be he a Muslim or a non-Muslim, enjoys equal rights in the field of economic enterprise.

## VI

### THE LAST WORD

It is necessary to emphasize before closing the discussion that an Islamic State is bound to give to the non-Muslim citizens whatever rights Islam prescribes or permits, regardless of what rights and privileges are given to or withheld from Muslims in the neighbouring or other non-Muslim states. Islam does not believe in the fact that Muslims should draw up their social or economic policies only with reference to the policies of non-

Muslims, nor does it tolerate that if non-Muslims act unjustly, the Muslim states should make their innocent non-Muslim subjects the victims of wrath and vengeance. Islam has its own definite and clearly-defined ideology and Muslims have to observe its code to the best of their ability. Hence, whatever we give, we shall give with an open heart. Moreover, the rights conferred upon the non-Muslims by the Islamic State shall not be simply meant to adorn the statute-book but it shall be the duty of the State to translate them into actual practice.

It is hardly necessary to stress in the face of the above facts that the establishment of an ideological Islamic State is the greatest guarantee for non-Muslims in Pakistan. Then, and then alone, can that vicious circle of injustice be broken which is unfortunately going on in India with full vigour. And only in this way can Pakistan become the harbinger of truth and justice and show the right path to India also. The pity, however, is that many non-Muslims of Pakistan who have been paying heed to distorted interpretations of Islam and have been experiencing its perverted practice, feel greatly perturbed when they hear of the establishment of an Islamic State in this country. Not knowing the true facts, some of them start raising slogans that a Secular Republic like the one in India should be established in Pakistan. Is it not surprising that they insist on making an experiment which has already borne bitter fruits in India? Is that really something pleasant enough to be coveted? And, would it not be more reasonable to try and test a system of life based on godliness, honesty and observance of unalterable ethical principles than to follow one that has been tried and found wanting?

## Chapter 9

### The Problem of Electorate

MUSLIMS in our country have always stood for Separate Electorate. It was unfortunate that a question which was settled long ago, was reopened and as a result of political machinations it assumed great importance. Maulana Maududi discussed the pros and cons of the problem in an article which was published in 1955. The article is being given in the following pages.—*Editor*.

## THE PROBLEM OF ELECTORATE

**T**HE continuous dilly-dallying with constitution-making has started bearing 'fruits'. And one of the bitterest fruits we find in the form of the hitherto existing problems defying all attempts at their solution and an increasing number of new problems cropping up with the passing of time.

Not only that the issues which had all along been taken for granted as settled, are now being discussed afresh. The latest instance in point is that of separate electorate which had up till now been sanctified by unanimity of Muslim opinion in this sub-continent. But now it has entered the realm of controversy and debate, as certain groups from amongst the Muslims also have expressed themselves in favour of the joint electorate.

This, indeed, is a most deplorable state of affairs. But since the entire nation has to face it, the mere expression of grief and pain will not suffice. What is needed is an objective analysis of the problem and an unbiased evaluation of the merits and demerits of the two systems of election and a verdict based on reason rather than sentimental slogans and political catch-words.

### Some Pertinent Questions

To arrive at a sound conclusion, we must take into consideration the following four questions :

Firstly, why were the Muslims so bitterly opposed to the system of joint electorate during the British regime in the Indo-Pakistan sub-continent when the Indian National Congress was advocating it on the basis of territorial nationalism ? And what radical changes have occurred in the political situation which may make them change their decision and accept a thing they had opposed all along ?

Secondly, we should consider quite independently on the merits of the case, which system of election—joint or separate—is more suitable for a country whose population is composed of a number of elements differing from one another in respect of religion, culture and mode of social life !

Thirdly, can there be any practical consideration, any substantial national expediency which may make the introduction of joint electorate desirable ? What are the practical benefits that may accrue from its introduction and would they be acceptable to the people or not !

Lastly, what practical results are expected to follow in the wake of the introduction of the system of joint electorate and what are the merits and demerits of the system of separate electorate.

The following is a brief discussion of some aspects of these pertinent questions:

**Why Now ?**

What the protagonists of joint electorate can say in regard to the first question is that the system of joint electorate was wrong and unacceptable to Muslims in undivided India because they were a minority *vis-à-vis* the Hindus who were in an overwhelming majority, and thus they were bound to suffer if the system of joint electorate was introduced. But now Muslims are in a majority in Pakistan and the non-Muslims are a minority and thus the system of joint electorate will be to the advantage of the Muslims.

The protagonists of the joint electorate cannot defend it on any other basis. This means that they hold sheer "expediency" as the criterion of right and wrong.

A thing was wrong yesterday merely because it was detrimental to Muslim interests, just because it was inexpedient. But today they are prepared, nay, they insist, to adopt it because it is consistent with their alleged national interests !

No doubt, these people have every right to unveil their character and the working of the iron mind. But is it or was



it ever the national mind of the Muslims ? Was this their line of thinking in pre-partition days ? Did the general Muslims' minds move in these overt grooves ? Were we confident that the Muslims neither subscribed to this view in the past nor hold the view-point today. Our national psychology has neither been so corroded in the past nor is it by the grace of God so polluted today.

Their rejection of the Congress standpoint was not merely because its adoption would have led to catastrophic results for the Muslim minority inhabiting the Indo-Pakistan sub-continent but primarily because the very idea that geography was the basis of nationhood was not acceptable to them. It was incompatible with their fundamental creed, their culture, their social philosophy and their traditions.

The history of this very sub-continent knocks the bottom out of the idea of territorial nationalism. Innumerable Hindus of India embraced Islam many centuries ago and as soon as they did this, they cut off all their affinities with the Hindu society in spite of the fact that these converts to Islam and their former kith and kin belonged to the same race, expressed themselves in the same language and lived on the same territory. On the contrary, Muslims coming from various distant countries were soon absorbed into the local Muslim society despite geographical, racial and linguistic differences. They became one with the local converts—members of one Islamic fraternity.

All this was not just a mere accident. It was the result of a peculiar concept of ideological nationhood and of the centuries old traditions of Muslims—a concept and traditions which cut across all barriers of race, colour and language.

It was due to these factors that Muslims started demanding separate electorate as soon as democratic institutions were set up in the sub-continent. They trampled the Congressite one-nation theory under their feet and rejected the system of joint electorate which was intended to weld all the communities in-

habiting Hindustan into one nation. And it was a product of this very national consciousness that they ultimately came forward with their demand for Pakistan in spite of the fact that they were not unaware that it would entail tremendous sacrifice in life and property.

The only change that has occurred due to partition is that a new country has appeared on the map of the world comprising of Muslim-majority areas. But it is obvious that this political change has in no way altered the foundations of nationhood. And how can one believe that this political change has so radically affected the national psychology as to make the nation succumb to the concept of territorial nationalism which was an anathema for them just a few years back !

#### **Disintegrating Factors**

Now we move on to the second question. It is evident that the system of joint electorate is feasible only in a country different sections of whose population differ from one another only in details and not on fundamentals.

But everyone will accept that religious creed, moral values, concept of life and patterns of culture and civilisation are not matters of secondary importance. They are of prime and fundamental significance. Moreover, when these different sections have been separated from each other to such an extent that their social spheres have become totally different and distinct, the consciousness of separate nationhood is bound to develop and thrive.

To make such varying sections of population of a country vote together can never be held as prudent and proper. For this would mean the assumption of a unity that does not exist. This unfounded assumption cannot change the throbbing facts and realities ; it cannot weld these divergent elements into one organic whole.<sup>1</sup>

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1. It would be instructive here to remind the reader of what Quaid-e-Azam Muhammad Ali Jinnah said about this issue. In a speech in [contd.]

Despite this baseless and unwarranted assumption of national unity, the factors that separate them will still be there and will continue to work as before. Every community will still be overwhelmingly inclined to vote for the members of its own community. The majority community will be satisfied as it will succeed, to its heart's content, in getting its own people elected. If the minority is numerically weak in every constituency, it will be deprived of representation altogether. And this will lead to their perpetual unrest and discontent. And if the minority is a little powerful, it will start hargaining with the majority which, in turn, will generate worst tendencies and lead to bitter discord and an endless conflict.

All this will result in bringing to the fore a group of morally depraved people pickforked into power by intrigues and conspiracies, and who will, in fact, represent none. And this will demolish the very basis of democracy. Instead of adopting this erroneous and ill-conceived method, based on a false and baseless assumption, will it not be better and wiser to face facts, to recognise the differences that do exist and to confer upon every community the right to elect its own representatives who can best represent their view-point? No one can deny that this method is more natural, more reasonable and more just.

### **The Diversity**

As for the third question, the only practical advantage that the protagonists of joint electorate may claim for that system is that it will suppress the feelings of separation and diversity, reduce the distinctive characteristics of these heterogeneous elements and ultimately transform them into one nationhood.

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November 1945 he declared :—

"We (the Hindus and the Muslims) are different in everything. We differ in our religion, our civilization and culture, our history, language, our architecture, music, jurisprudence and our society, our dress—in every way we are different—we cannot get together only in the ballot-box"—*Editor*.

But our point of view is that we are not desirous of eliminating the distinctive features of the different communities of Pakistan. We are not at all keen to destroy their separate entity and coerce them to submerge their cultural individuality. And even if somebody considers this objective desirable, the method suggested for its achievement is absolutely wrong.

The fundamental factor that has divided and separated various sections of people in our country is the difference of religion. It is religion that has raised a huge wall that separates Muslims and non-Muslims. It is this that has given them different principles of conduct, different objectives of life, different values of morality and different modes of living. It is religion alone that has separated their social orbits and has divided them into separate communities.

One effective method of removing the factors that divide them can be to absorb the non-Muslims in the Muslim community.

Howsoever desirable this end may seem, we should not stoop down to political machinations to achieve it. If somebody has a liking for the Islamic ideology, he can embrace the brotherhood of Islam and become a part and parcel of our nation. But if he does not agree with the Islamic ideology, he has every right to do so and we shall still be prepared to confer upon him his rights as a non-Muslim citizen of our country. We are firmly of the view that resorting to the use of crooked means for the attainment of such an object is unfair and un-Islamic and should be condemned by all fair-minded people.

The only other course that remains to unify and integrate these diverse communities is to relegate religion and faith into the lumber-room of insignificance, to destroy religion as the main factor shaping culture and civilization and foster a common secular culture as the basis of Pakistani Nationalism.

If this be the end, joint electorate is definitely a step forward in this direction.

But in this case the next step—a step that must follow—is to frame a secular constitution, which will lead to a still further step—to let religion live by sufferance and remain strictly confined to the narrow domain of beliefs and devotional practices and even to encourage intermarriages between different communities in order that Pakistanis may not remain divided into separate societies which eventually divides them into separate nationalities.

Is this the object of the protagonists of joint electorate ? If this is their objective, they should at least have the moral courage to say it frankly.

But this may be the view of a few secularists. As for the millions of Muslims of Pakistan, they have nothing but contempt for it. Because, if this was what the Muslims wanted, what was the harm in a United India (*Akhind Bharat*) ? What was the need of offering a heavy price of life and property for the establishment of a separate state ?

### **Dangerous Consequences**

Now we come to the last question and would like to delineate the practical results of introducing joint electorate. It is certain that this will lead to the growth of two separate nationalities on territorial foundations and this will prove suicidal for the integrity of Pakistan.

We should not forget that it is the religious spirit alone which was responsible for the partition of this sub-continent, and it is the religious spirit alone that has made the two regions which are separate from each other by a distance of no less than a thousand miles, the parts of one single country. Race, geography, language and mode of living—none of these factors can unify them. The only unifying factor is the religion of the majority which initially led to the establishment of this State and which alone can work as a unifying factor.

The day the religious spirit and consciousness of the people are cooled down and people begin to feel in terms of any other linguistic and cultural differences are bound to gain strength

and momentum. If this happens, none can stop the growth of Bengali nationalism in East Pakistan and the same will happen in West Pakistan.

Thus the notion that the issue of separate electorate is just a matter of choosing between two systems of election, is fallacious and deceptive. This, in fact, is a matter of life and death for the State of Pakistan.

If we want to keep the two wings of the country joined together, the only course can be to keep the consciousness of Muslim nationhood alive and fresh and to further strengthen and foster it by establishing the Islamic system of life. And it is obvious that this necessitates the introduction of the system of separate electorate.

But if, on the contrary, we are keen to tear the integrity of Pakistan into shreds, the introduction of joint electorate will definitely be an effective step in that direction.

This will strengthen, in both the geographically distant wings of the State, the consciousness of territorial nationhood at the cost of Islamic fraternity. And, as this feeling will grow in strength and intensity, Muslims of the two different areas who have nothing common except religion, will be driven farther and farther away from their own brother-in-faith and nearer to the people belonging to their own territory who have almost every factor common with each other except religion.

#### **The Case for Joint Electorate Considered**

Now let us have a cursory glance at the arguments advanced by the protagonists of joint electorate.

Firstly, the claim that when the minority community is itself insistent on the introduction of joint electorate, there is no reason why the majority should shun it. Does this mean that Muslims are suffering from some sort of fear-complex, the fear of Hindu domination which is unfounded in view of the superior numerical strength of the Muslims?

Secondly, due to separate electorate we find a strong block of Hindu members in East Pakistan Legislative Assembly and

whenever there is an internal disension in the ranke of Muslim members, they hold the balance of power in their hands. Separate electorate will only prepetnate this unfortunate state of affairs.

Thirdly, the system of separate electorate will perpetuate the division of the country into separate nationalities, although the integrity, solidarity and progress of Pakistan are dependent upon the consciousness belonging to one nation.

Fourthly, if the two-nation theory is to hold good even after the establishment of Pakistan, the Hindus of Bengal may well say : 'If you consider us a separate nation, then give us a separate national homeland.' Will this 'just' and 'fair' demand be acceptable to us ? And if we turn down this demand, will we not be only demonstrating our moral hankruptcy as we have ourselves achieved our own homeland on this very ground ?

The four arguments quoted above exhaust the entire stock of arguments of the protagonists of joint electorate.

So far as the first argument is concerned, both the foundations on which it rests are extremely weak. It rests on two wrong assumptions : (1) that the Muslim majority of East Pakistan demands separate electorate out of fear-complex and (2) that the Hindu minority is exposing itself to a number of risks, inherent for it in the system of joint electorate, just out of love for the greater good of the country.

We have already thrown light on the causes of Muslims' insistence on separata electorate. As for the Hindus, their keenness for joint electorata is the ontcoma of their desire to fan the fire of Bengali nationalism in Bengal, to sabotage the Mnslims' aspirations to make Pakistan an Islamic State and to put Pakistan along the road to secular democracy, and last, but not the least, to use Muslims from behind the scenes for the fulfilment of all their designs.<sup>1</sup>

The Hindue who were most influential in Bengal during the British rule have realised the futility of the method of direct

1. See Appendix V. *Editor*,

and open work. Now they want to sit behind the screen and pull wires. They know that those Muslims who are elected with the backing of Hindus will be far more useful and effective for the achievement of their aims than the Hindus themselves.

These are the reasons which have prompted them to come out with this stunt of joint electorate and therein lies a formidable danger to Pakistan.

The second argument has no weight unless we presume that the unity among the Hindus of Bengal and dissensions in the ranks of Muslims will persist as a permanent feature of Bengali politics. Will those of our Muslim brethren who are so vociferous in their demand for joint electorate, let us know as to why this state of affairs should continue to persist in the future?

As for the third argument, we have already dealt with it earlier in this article.

With reference to the last argument, we have to point out that had there been any considerable area in Bengal which could be made the national home of Hindus, it would have already gone to the share of India at the time of partition.

Now there is no area which the Hindus may legitimately demand. If the members of a community are in a majority in some small town or sub-district, can any sane person demand, on this basis, that community?

This brief discussion brings us to the conclusion that joint electorate is totally opposed to the needs of our country and our people and the system of separate electorate alone is in consonance with the ideology and needs of Pakistan.



## Chapter 10

### Some Constitutional Proposals

(Submitted to the First Constituent Assembly of Pakistan)

In 1952, Constitution-making entered its most crucial stage. The various Sub-Committees had finalised their reports and the blue-print of the Constitution was being given the last touches.

At that moment, Manlana Maududi put forward some very concrete and elaborate Constitutional proposals. These proposals were drafted in August 1952 and were submitted to the first Constituent Assembly of Pakistan. This is a very important essay and throws a flood of light on the contents of the Constitution which the Islam-loving people demand for Pakistan. An idea of the detailed provisions of an Islamic Constitution can be had by a thorough study of this article.— *Editor*.

## SOME CONSTITUTIONAL PROPOSALS

**A**T the very outset, we wish to declare in the clearest possible terms that our first and foremost concern is to make Pakistan a truly Islamic State. For this purpose, either the mere insertion of the Objectives Resolution in the Preamble of the Constitution, nor the inclusion of an article in the Directive Principles to the effect that no legislation will be made against the Qur'ān and the *Sunnah*, nor even the formation of a Committee of 'Ulamā for consultative purpose (but not having a final voice) in case of disagreement as to whether particular law is or is not against the Qur'ān and the *Sunnah*, will serve that purpose.

This purpose cannot be achieved unless a provision is made in the body of the Constitution itself that no legislature, Central or Provincial, shall have the power to enact any law which conflict with the teachings of the Qur'ān and the *Sunnah*. Moreover, there should be a specific provision in the Constitution that every citizen will have the right to challenge in the Supreme Court any law passed by a legislature on the ground of its being repugnant to the teachings of the Qur'ān and the *Sunnah* and therefore *ultra vires* of the Constitution.

In addition to these provisions in the body of the Constitution, the following should be included as the Directive principles :

- (1) All the existing law of the land shall be brought in conformity with the Islamic *Shari'ah* with a prescribed period which shall not exceed 10 years in any case.
- (2) Moral training in accordance with the Islamic principles and standards of conduct shall be made compulsory for all services : Central, Provincial, Military and Civil and all that is not in tune with the Islamic teachings

and the tenets of Islamic ethics should be strictly excluded from that training ;

- (3) All the departments of the State shall provide for their Muslim personnel every facility necessary for the observance of the obligations prescribed by Islam and all the hindrances in this respect shall be banished root and branch ;
- (4) The Government shall establish and promote all that is good according to Islam and suppress and eradicate all that is evil according to it and the policy of the State and its execution by the Government in its various spheres of activity shall be moulded and managed in a way that fully conforms to the Islamic way of life, both in letter and in spirit ;
- (5) The system of education shall be so reformed as to enable the Muslims to get their moral and intellectual training in strict accordance with the Islamic ideology and all that is against that ideology shall be eliminated therefrom ;
- ⑤ (6) The Government shall complete, within a prescribed time-limit, not exceeding 10 years, all the necessary arrangements for taking over legal responsibility to provide every needy citizen with the basic necessities of life, viz., food, clothing, housing, medical aid and education.

### **Fundamental Rights**

The Constitution of an Islamic State must guarantee fundamental rights to all citizens. In this connection, we regret to note that the report on fundamental rights prepared by the Fundamental Rights Committee and passed by the Constituent Assembly in 1950, was a gross and flagrant violation of Islamic tenets and clearly betrayed the evil designs of those who hold the reins of power. If the members of the Constituent Assembly still continue to adopt the same attitude towards these rights, it will not augur well for anybody in this country.

In order to gain the real co-operation and good-will of the people and to make Pakisten a really peaceful and prosperous State all the citizens must be guaranteed—of course, within the limits of law—the following fundamental rights :—

- (a) Protection of life, honour and property ;
- (b) Freedom of thought, expression, belief and worship ;
- (c) Freedom of movement throughout the country ;
- (d) Freedom of assembly and association ;
- (e) Freedom of adopting any profession or occupation and the right to own, acquire and dispose of property ; and
- (f) Equality of opportunity in all walks of life and equal right of benefiting from all public instructions.

In addition to these rights, the Constitution should further guarantee that :

"No citizen of the State shall be deprived of the fundamental rights without his guilt being judicially established in an open court of law according to the common law of the land".

Without this guarantee nobody can feel secure against the high-handedness of the executive and the feeling of constant insecurity cannot but breed discontent and even hatred against the Government itself. This, in its turn, will be most dangerous and harmful for the largest interest of national solidarity and sincere co-operation between the Government and the people. We, therefore, have no hesitation in declaring that if our Constitution-makers try to take away or abridge or limit these rights, they will be guilty of causing discontent and disruption in the country and it will be an unpardonable act of perfidy, on their part, towards the people and the State of Pakistan.

#### **Preventive Detention**

As for the reservation of the power of "preventive detention" for the executive, we opposed this when the Basic Principles Committee's Report was published in 1950.<sup>1</sup> We still stick to that position and are definitely of the opinion that these powers, in the form in which they were proposed in the Report,

1. Abul A'la Maududi, *Dastoori Sifarishat par Tanzeed*, Lahore, 1950.

are a complete violation not only of Islamic Jurisprudence but also of the fundamental principles and common notion of justice. Anyhow, if the Constitution-makers of this country insist on the power of preventive detention being granted to the Executive, they should not do so without the following provisions:—

- (1) Every law (whether an Act or an Ordinance) enacted under the powers of preventive detention must clearly define the offences that it seeks to prevent ;
- (2) Every person arrested under this law must be produced before a court of law and a definite charge brought against him ;
- (3) The Executive should not be given the privilege of withholding any piece of evidence considered essential by the court for giving its decision on the charges made. Mere satisfaction of the Executive should in no case be a ground sufficient for the detention of a citizen. Only a court of law, if satisfied as to the guilt of a person, should have the power to order detention ;
- (4) The person so accused must be afforded every reasonable facility and opportunity to prove his innocence ;
- (5) A court of law and not the Executive should have the right to decide the period of detention ;
- (6) No extension of the period of detention should be allowed.

In this connection one is impelled to say that it is most cruel to detain a person for consecutive periods of six months ; his detention being extended after every term by another term on the very day on which he and his near and dear ones expect his release. This revengeful method is so mean that no gentleman could have invented it. If some member of the Constituent Assembly do not realise its meanness today, a time might come when they themselves may learn it through personal experience. Moreover, the way that the term "emergency" has been exploited by our rulers in the past few years of indepen-

dence, constrains us to urge in the strongest possible terms that the Executive should in no circumstances be allowed to possess the power of suspending either the fundamental rights or the writ of *Habeas Corpus*. The maximum allowance that can be made in this respect is that in case of actual war, rebellious persons who are charged with high treason, conspiracy against the State or armed revolt may be tried *in camera*. But the power of detention without judicial trial or of suspension of fundamental rights or of the writ of *Habeas Corpus*, should in no case be granted to the Executive. And let it be known at this very moment that if any such attempt is made in our Constitution we are determined to resist it with all the force at our command.

The only excuse advanced by or on behalf of the rulers of the country in favour of these powers is, that if "saboteurs" and "disruptionists" and "spies" and "agents of the enemy" are tried in open courts, the state-secrets which Government intends to guard through their arrest and detention, will become known to the enemy and this would defeat the very purpose for which such action is taken. The hollowness of this argument can be exposed by a cursory look at the list and the type of people so far arrested and detained under these powers. Moreover, even leaving aside this aspect of the matter and taking the argument at its face value, the following two pertinent questions remain unanswered :—

- (1) If state-secrets do not become known to the enemy while they are in the knowledge of the police, the C.I.D. and the Home Department, why does the Government apprehend that they will leak out as soon as they come within the knowledge of our Courts ?
- (2) Does the Government mean to imply that the personnel at present presiding over the courts of Pakistan consists mostly of spies or agents of the enemies and they are so keen to transmit the secrets of the State to them ? Are the judges and magistrates of Pakistan

really less reliable, in the eyes of the Government than the personnel of the police and the C.I.D. ?

### Judiciary

It is the independence and impartiality of the judiciary which ensures the internal peace of a country and the tranquillity of its people. No amount of rights and privileges written in the Constitution can give the people any satisfaction if the courts, owing to the interference of the people in power are not free to administer unfettered justice. As the very existence of a State depends on the contentment of its people, the following provisions must be specifically made in the Constitution :—

- (1) The Judiciary shall be completely independent of the Executive. A maximum time-limit, say a couple of years, may be fixed for implementing this separation ;
- (2) All the subordinate courts shall be under the High Court both judicially and administratively. The appointment, dismissal, suspension, promotion, demotion and transfer of the judges and other officers of the lower courts and the magistrates shall be completely in the hands of the High Court ;
- (3) The courts shall have unlimited powers to summon every kind of evidence which they consider necessary for the administration of justice. Not even the Government shall have the privilege to withhold any evidence required by a Court of Law ;
- (4) Neither the legislature nor the Government nor the Head of the State should have the power to compel any law-court to try any case *in camera*. The holding of a trial openly or *in camera* should be left to the discretion of the courts themselves ;
- (5) All matters requiring adjudication shall be heard by common courts of the country even though the Government, its Ministers, or its officials are involved. Moreover, neither the Central nor the Provincial Governments nor their legislatures shall have the

power to constitute special tribunals for any matter requiring adjudication. Such a power should vest in the Supreme Court and the High Courts which shall make use of it if they deem it necessary. Election Tribunals, too, if and when necessary, should be constituted and appointed by the Supreme Court or a High Court ;

- (6) The Supreme Court of Pakistan shall have the inherent and original jurisdiction to entertain and decide cases challenging the validity of the legislation enacted by the Head of the State or the Central or Provincial Legislatures, if such legislation is considered to be in contravention of the letter or the spirit of the Constitution ;
- (7) All legal protections against suits that had been granted by the former British Government to its employees, should be withdrawn *in toto* and the citizens should be granted the right to use the Government employees without any let or hindrance. It should not be forgotten that our former alien rulers had resorted to this method of protecting their employees in order to overawe and suppress the "natives" ;
- (8) This should also be provided in the Constitution that no court shall have the power to try a case of its own contempt unless the contempt is of a general nature ;
- (9) All Court-fees should be abolished through an article of the Constitution. Throughout their long history Muslims never dreamt of this method of converting the law-courts into "law-shops." As a matter of fact we are not aware of any other civilized Government under the sun except the former British Government of undivided India which ever thought of making its court a business concern. It will really be extremely disgraceful on our part to retain this shameful practice which negates the very conception of Islamic justice.



## Election and Legislatures

It is a truism that the very existence of a democratic system depends on the nature of elections and the constitution and powers of the legislatures. A democratic system can never develop and flourish on healthy lines if elections are not held in a fair manner and the constitution of the legislatures is not just and equitable and their powers are not so limited as to prevent them from impairing the freedom and impartiality of elections.

To ensure this the following things should be incorporated in the Constitution :—

- (1) In addition to the various constitutional and legal qualifications for the membership of a legislative body, the mental and moral qualifications prescribed by the Qur'ān and the *Sunnah* for holding such offices should also be included among the Directive Principles. The Head of the State should, on the eve of elections, draw special attention of the voters to these qualifications, give them the widest publicity through the radio and the press and devise ways and means of ensuring that these instructions are actually observed ;
- (2) Self-candidature should be abolished and made a disqualification for the membership of an Assembly. We urge its abolition on the ground that it is against the *Shari'ah*. The experience of elections has also brought vividly to the surface the evils of this practice. The self-seekers who come forward as candidates have demoralized, to the very core, the whole of our political and social life ;
- (3) The rule of 'unopposed elections' should be stopped forthwith, because it is against commonsense and has also been responsible for many malpractices in the elections. In all such cases the votes must be cast "for" and "against" the "candidate" on the basis of "yes" and "no". In the case of the "no's" being in the majority, it is far better that the constituency

remains unrepresented instead of being represented by one who does not represent it ;

- (4) No legislature should have the powers to make any such rules or laws concerning elections which may, in any way, impair the free and impartial holding of elections or favour any particular party or parties as against others ;
- (5) The department or the commission responsible for the conduct of elections should be duly-bound to conduct them with complete impartiality. Every citizen should have the right to challenge, in a law-court, the impartiality and fairness of elections as a whole or in any one or more constituencies and to have it set aside if he is able to prove culpable negligence, dishonesty or partiality therein ;
- (6) The right of vote given to women should be qualified, at least for the present, by a certain standard of education. Experience has shown that adult franchise for women under the prevailing conditions has proved unsuitable for them and harmful to the welfare of the country ;
- (7) As regards the election of women to the legislative assemblies, it is absolutely against the spirit and precepts of Islam, and is nothing more than a blind imitation of the West. According to Islam, active politics and administration are not the field of activity of the womenfolk. It falls under the men's sphere of responsibilities. The proper method of solving this problem is to constitute a separate Assembly whose membership should be confined to women only—all of them elected by female voters. The main function of this Assembly should be to look after the special affairs of the women such as female education, female hospitals, etc. Of course, it should have the full right to criticise matters relating to the general welfare of the country. Moreover, this Assembly must be con-

sulted by the legislature on all matters that concern the welfare of women ;

- (8) The formation of parties and cliques within the Legislative Assemblies should be constitutionally prohibited. Various parties in the country may take part in the election as parties for sending to the Assemblies the most suitable members in their opinion but after the election the members of the Assembly should owe allegiance solely to the STATE, its CONSTITUTION, and the entire NATION, and should vote and act according to the dictates of their own conscience ;
- (9) If dismissed Government servants are to be disqualified for elections on the ground of misconduct, the term "misconduct" should be defined.

### The Qadian Problem

We demand with all the force at our command that, along with other non-Muslim groups, the Qadianis should be included in the schedule of minorities having the right to elect their own representatives, by the method of separate electorates, for the seats fixed in proportion to their population. The entire Muslim *millat* is unanimous on the point that the Qadianis are a separate *Ummah* and the Muslims of all shades of opinion with the exception of a few Westernised people who attach no importance to religion, have already declared this from the press and the platform. Under these circumstances, if the Constituent Assembly insists on maintaining the *status quo* of the pre-partition days and treats the Qadianis as a part of the Muslim nation in the future constitution of Pakistan, this will imply abuse of the trust it holds on behalf of the nation.<sup>1</sup> The Qadianis themselves have taken the stand which makes them a separate *Ummah*. For, according to their declared religious

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1. It may be mentioned here that before partition, the Qadianis themselves demanded from the British Government that they should be declared a minority and given separate seats in the Assembly—  
Editor.

beliefs, and creed :—

- (1) All those Muslims who do not accept Mirza Ghulam Ahmad as a prophet of God, are "Kafirs" ;
- (2) A Qadiani is prohibited from giving his daughter in marriage to a Muslim ;
- (3) They are prohibited from joining the congregational prayers led by a Muslim *Imam* ; and
- (4) They do not and cannot attend even the funeral prayers offered for a Muslim.<sup>1</sup>

In brief, their new "prophet" has raised a wall between them and the Muslims, so much so that nothing which could unite them—neither the religious belief nor its practice (e.g., prayers etc.) nor the social relations—has been left unaffected. And the matter does not stop here, They have actually organized themselves as a separate and parallel *Ummah*, which has been in conflict with the Muslims in every walk of life for the last fifty years. If, in spite of all this, they are not prepared to be declared as a separate *Ummah* it is because they wish to retain all the benefits they are deriving as a section of the Muslim nation side by side with those which their organization as a separate *Ummah* gives them. We do not expect that the Constituent Assembly will become a party to this fraud which is being perpetrated on the Muslims of this country.<sup>2</sup>

#### Powers of the Executive and the Head of the State

Another matter of fundamental importance from the constitutional point of view is that of the powers of the Executive and of the Head of the State, because even the longest list of fundamental rights and privileges and the best of constitutions can be set at naught by an unfettered Executive or Head of the

1. It is common knowledge that a Qadiani Central Minister in spite of being present at the spot, did not join the funeral prayers even of the Quaid-e-Azam.—*Editor*.
2. For a fuller appreciation of the problem see Abul A'la Maududi : *The Qadiani Problem*, Islamic Publications Ltd., Lahore.

State. In 1950, when the first Basic Principles Committee Report was published, we had pointed out that it had committed a blunder in granting unlimited powers to the Executive and to the Head of the State. We do not know whether the Committee has now realised the horrible consequences of its proposals. As a precautionary measure, therefore, we submit the following proposals to serve as safeguards :—

- (1) The Head of the State should in no circumstances be given the power to suspend the Constitution. The countries which committed the folly of giving such powers have generally landed themselves in trouble and therefore it cannot be expected to bring any good to Pakistan. The utmost that can be conceded in this respect is that in times of grave emergency he may be empowered to suspend the Constitution, at the most in a province and for a specified period. The absolute power of suspension of the entire Constitution inevitably leads to dictatorship.
- (2) Nobody in the State, not even its Head—and in no capacity, neither private nor public—should be above law or beyond the jurisdiction of the courts of law. Moreover, the citizens should have the right freely to seek redress against every officer of the State (including its Head) for any injury caused by him in his official or private capacity. The argument generally advanced against this is that it will give rise to malicious and harassing litigation against the State officials and will hamper their work. But this argument carries little weight. Leaving aside the fact that this evil can be checked by adopting several legal means, the actual fact is that it is not the rulers but the ruled who are usually at the mercy of the other party. The right to sue any one for causing injury to a person is such an inherent and fundamental right of citizens in an Islamic State, that the Muslims and the *Zimmis* alike have enjoyed it not only against the Caliphs but against the

Holy Prophet himself. Thus no power can take away this right from the citizens of an Islamic State.

- (3) The Head of an Islamic State cannot be granted the unlimited power or prerogative of clemency. All that he may be permitted to do in this respect is that :—

- (a) he may grant pardon, in the interest of public good, for sentences awarded for political or administrative offences ; and
- (b) he may change a death sentence into some other sentence, not, however, on the ground of clemency but on the real merits of a case. It would be advisable that a higher judicial committee be formed to help and advise the Head of the State in such cases.

Beyond this the Head of an Islamic State should have no powers, because he is there to uphold justice and not to undo it. As a matter of fact clemency or mercy to *proved* criminal has no place in the Islamic conception of justice. Such powers were devised and assumed by despotic monarchs for asserting their "divine right" and unlimited powers over their subjects.

### Princely States

The states that have acceded to Pakistan must be brought in line with the provinces. We are not going to tolerate despotic or semi-despotic powers of anybody in any form and anywhere in the country. It must be specifically provided in the Constitution that the type and pattern of government and administration of the states shall be like that of the provinces.

### Amendment of the Constitution

Two principles should be adopted in regard to the amendment of the Constitution :—

- (1) The amendment of such parts of the Constitution as are of fundamental importance should be made as difficult as possible, so that the real nature of the Constitution may remain intact ;
- (2) The amendment of the remaining parts of the Constitu-

tion should, on the other hand, be made easy, so that it may be improved in the light of practical experience whenever necessary.

As to what is of fundamental importance and what is not, can only be decided when the blue-print of the Constitution comes before us in its complete form.

# APPENDICES



# Appendix I

## Basic Principles of Islamic State

Critics have often tried to play upon the myth that there should gross differences of opinion amongst the '*Ulamā* of the various sects of the Muslims as to the nature of the Islamic Constitution and have asserted that, in the absence of unanimous statement by them, the nature of the Islamic Constitution will remain "a riddle, wrapped in a mystery inside an enigma". This myth was fully exploded when the challenge thrown by such critics was accepted by the '*Ulamā* (Sunni and Shi'ah both) and the thinkers of Pakistan. A Convention of the '*Ulamā* representing all the schools of Islamic thought was held from 21st to 24th January, 1951, in Karachi, and it formulated the fundamental principles of the Islamic State. The Convention was attended by thirty-one '*Ulamā* and all their decisions were unanimous. These basic principles of Islamic State are reproduced here in Appendix I.—*Editor*.

# BASIC PRINCIPLES OF ISLAMIC STATE

**T**HE Constitution of an Islamic State should comprehend the following Basic Principles :—

1. Ultimate Sovereignty over all Nature and all Law vests in *Allah*, the Lord of the universe, alone.
2. The law of the land shall be based on the *Qur'ān* and the *Sunnah*, and no Law shall be enacted nor any administrative order issued, in contravention of the *Qur'ān* and the *Sunnah*.

*Explanatory Note :*

If there be any laws in force in the country which are in conflict with the *Qur'ān* or the *Sunnah*, it would be necessary to lay down (in the Constitution) that such laws shall be gradually, within a specified period, repealed or amended in conformity with the Islamic Law.

3. The State shall be based not on geographical, racial, linguistic or any other materialistic concepts, but on the principles and ideals of Islamic Ideology.
4. It shall be incumbent upon the State to uphold and establish the Right (*Ma'ruf*) and to suppress and eradicate the Wrong (*Munkar*) as presented in the *Qur'ān* and the *Sunnah*, to take all necessary measures for the revival and advancement of the cultural pattern of Islam, and to make provision for Islamic education in accordance with the requirements of the various recognised schools of Islamic thought.
5. It shall be incumbent upon the State to strengthen the bonds of unity and brotherhood among the Muslims of the world and to inhibit the growth of all prejudicial tendencies based on distinctions of race or language or territory or any other materialistic consideration and to preserve and strengthen the unity of the *Ummat al-Islamiyah*.
6. It shall be the responsibility of the Government to guaran-

tee the basic necessities of life, i.e., food, slothing, housing, medical relief and edneating to all oitizens without distinction of race or religion, whn might temporarily or permanently be incapable nf earning their llvellhood dne to un-employment, sickness, or other reason.

## CITIZENS' RIGHTS

7. The oitizens shall be entitled to all the rights conferred up-  
on them by the Isamio Law i.s., they shall he assured  
within the limits of the law, of full secnurity of life, pro-  
perty and honour, freedom of religion and belief, freedom  
of worship, freedom nf person, freedom nf expression, free-  
dom of movement, freedom of asaoiation, freedom of  
occupation, equality of opportunity and the right to benefit  
from public services.
8. No citizen shall, at any time, be deprived of these rights,  
except under the law and none shall be awarded any  
punishment of any charge without being given full opport-  
nunity of defence and without the decision of a court of law.
9. The recognized Muslim schools of thought shall have,  
withln the limits of the law, complete religious freedom.  
They shall have the right to impart religious instruction to  
their adherents and the freedom to propagate their views.  
Matters coming under the pnrvlew of Personal Law shall  
be administered in accordance with their respective codes  
of jurisprudence (*fiqh*), and it will be desirable to make  
provision for the administration of such matters by judges  
(*Qadis*) helonging to their respective schools of thought.
10. The non-Muslim citizens of the State shall have, within the  
limits of the law, complete freedom of religion and worship,  
mnde of life, cnture and religious education. They shall  
be entitled to have all their matters concerning Personal  
Law administered in accordance with their own religious  
code, usages and onstoms.
11. All obligations assumed by the State, within the limits of  
the *Shari'ah*, towards tho non-Muslim citizens shall be fully

honoured. They shall be entitled equally with the Muslim citizens to the rights of citizenship as enunciated in paragraph 7 above.

12. The Head of the State shall always be a male Muslim in whose piety, learning and soundness of judgment the people or their elected representatives have confidence.
13. The responsibility for the administration of the State shall primarily vest in the Head of the State although he may delegate any part of his powers to any individual or body.

### GOVERNANCE OF THE STATE

14. The Head of the State shall function not in an autocratic but in a consultative (*Shura'i*) manner, i.e., he will discharge his duties in consultation with persons holding responsible positions in the Government and with the elected representatives of the people.
15. The Head of the State shall have no right to suspend the Constitution wholly or partly or to run the administration without a *Shura*.
16. The body empowered to elect the Head of the State shall also have the power to remove him by a majority of votes.
17. In respect of civil rights, the Head of the State shall be on the level of equality with other Muslims and shall not be above the law.
18. All citizens, whether members of the Government, officials or private persons, shall be subject to the same laws and the jurisdiction of the same courts.
19. The Judiciary shall be separate from and independent of the Executive, so that it may not be influenced by the Executive in the discharge of its duties.
20. The propagation and publicity of such views and ideologies as are calculated to undermine the basic principles and ideals on which the Islamic State rests, shall be prohibited.
21. The various zones or regions of the country shall be considered administrative units of a single State. They shall not be racial, linguistic or tribal units but only administra-

tive areas which may be given such powers under the supremacy of the Centre as may be necessary for administrative convenience. They shall not have the right to secede.

22. No interpretation of the Constitution which is in conflict with the provisions of the Qur'an or the *Sunnah* shall be valid.

### NAMES OF THE 'ULAMĀ PARTICIPATING IN THIS CONFERENCE

1. Maulana Sayyid Suleman Nadvi (President of this Conference).
2. Maulana Sayyid Abul A'lā Maudūdī, Amir Jamā'at-e-Islami, Pakistan.
3. Maulana Mufti Muhammad Shafi, Member, Board of Ta'limat-e-Islamia, Constituent Assembly of Pakistan.
4. Maulana Mufti Ja'far Hussain, Muftabid, Member, Board of Ta'limat-e-Islamia, Constituent Assembly of Pakistan.
5. Prof. Abdul Khaliq, Member, Board of Ta'limat-e-Islamia, Constituent Assembly of Pakistan.
6. Maulana Muhammad Zafar Ahmad Ansari, Secretary, Board of Ta'limat-e-Islamia, Constituent Assembly of Pakistan.
7. Maulana Shams-ul-Haq Afghani, Minister, Religious Affairs, Kalat State.
8. Maulana Ihtesham-ul-Haq, Mohtamim, Dar-al-'Uloom al-Islamia, Tando Allah Yar, Sind.
9. Maulana Badr-e-Alam, Head of Hadith Department, Dar al-'Uloom al-Islamia, Tando Allah Yar, Sind.
10. Maulana Muhammad Yousaf Binnori, Shaikh al-Tafsir, Dar al-'Uloom al-Islamia, Tando Allah Yar, Sind.
11. Maulana Muhammad Abdul Hamid Qadri Badayuni, President, Jamiat 'Ulama-e-Pakistan, Sind.
12. Maulana Muhammad Idris, Shaikh al-Jamia, Jamia Abbassia, Bahawalpur.
13. Maulana Khair Muhammad, Mohtamim, Madrasah Khair al-Madaniya, Multan.

14. Maulana Mufti Muhammad Hasan, Mohtamim, Madrasah Ashrafia, Lahore.
15. Pir Sahib Muhammad Amin al-Hasanat, Pir of Manki Sharif.
16. Haji Khadim al-Islam Muhammad Amin, Khalifa, Haji Tarang Zai, Peshawar District.
17. Qādi Abdus Samad Sarbazi Qādi, Kalat State.
18. Maulana Athar 'Ali, Sadr Āmil, Jamiat al-'Ulama-e-Islam, East Pakistan.
19. Maulana Ahu Ja'far Muhammad Saleh, Amir, Jamiat Hizbullah, East Pakistan.
20. Maulana Raghib Ahsan, Vice-President, Jamiat al-'Ulama-e-Islam, East Pakistan.
21. Maulana Muhammad Hahih-ar-Rehman, Vice-President, Jamiat al-Mudarrasiin, Sarsina Sharif, East Pakistan.
22. Maulana Muhammad Ali Jullundari of Majlis-e-Ahrar-e-Islam, Pakistan.
23. Maulana Sayyid Muhammad Dā'ūd Ghaznavi, President, Jamiat Ahle-Hadīth, West Pakistan.
24. Maulana Mufti Hafis Kifayat Hussain, Muftahid, Idarah-e-Āliā Tehaffuz-e-Huquq-e-Shien-e-Pakistan.
25. Maulana Muhammad Ismail, Nazim, Jamiat Ahle-Hadīth, West Pakistan.
26. Maulana Hahihullah, Jamia Diniah Dar-al-Hūda, Terhi, Khairpur Mirs.
27. Maulana Ahmad Ali, Amir, Anjuman Khuddam-al-Din, Lahore.
28. Maulana Muhammad Sadiq, Mohtamim, Madrasah Mazhar al-'Uloom, Khaddah, Karachi.
29. Maulana Shams-ul-Haq Faridpuri, Sadr Mohtamim Madrasah Ashraf al-'Uloom, Dacca.
30. Maulana Mufti Muhammad Sahihdad, Sind Madrasat-al-Islam, Karachi.
31. Pir Sahib Muhammad Hashim Mujaddidi, Tando Saadad, Sind.

## Appendix II

### 'Ulama's Amendments to the Basic Principles Committee's Report

BASIC Principles Committee's Report was published in December 1952 and a Convention of the 'Ulamā<sup>1</sup> representing all schools of Islamic thought coming from both the wings of the country was held in Karachi from 11th to 18th January, 1953. The Convention formulated its amendments to the Nazimuddin Report unanimously.<sup>2</sup> These amendments of the 'Ulamā are a historic document and are indispensable for those who want to study the developments of Constitution-making in Pakistan. An idea of the constructive contribution of the 'Ulamā to Constitution-making can be had from a comparative study of the original Nazimuddin Report, these amendments, the Muhammad Ali Report and the 1956 Constitution. Similarly a careful comparative study of these amendment and

1. All the 'Ulamā whose names appear in Appendix I were invited to this convention and almost all of them attended, so much so that the number of 'Ulamā who participated in the Convention, was 33 instead of 31.
2. There was only one point on which three delegates disagreed. Their views on this point are appended at the end of this appendix as Annexure No. 1.

the constitutional proposals presented by Maulana Maududi in August 1952 (Chapter X) also reveals the part which Maududi has played in the making of the mind of the intelligentsia of Pakistan on constitutional problems.

These amendments also show that the '*Ulamā*' were not concerned merely with the apparently religious aspects of the Constitution. They gave concrete proposals for all the aspects of the Constitution and did not fall a prey to any narrow-mindedness. The Islamic concept of religion is a wide one and the amendments reflect that the '*Ulamā*' have upheld the real Islamic concept which does not admit of any separation between 'the religious' and 'the secular.'—*Editor*.



**'ULAMĀ'S AMENDMENTS  
TO THE  
BASIC PRINCIPLES COMMITTEE'S REPORT**

*(With Original Text and Proposed One of Relevant Sections)<sup>1</sup>*

**Chapter II—DIRECTIVE PRINCIPLES OF STATE POLICY**

2. The following should be the Directive Principles of State Policy.

**Section 2, Clause (2), Sub-Clause (a)**

*Facilities should be provided for them to understand what life in accordance with the Holy Qur'ān and the Sunnah means, and the teaching of the Holy Qur'ān to the Muslims should be made compulsory.*

The text of this sub-clause of the Report lends itself to the meaning that, while keeping intact the foundations of the system of education as obtaining during the British regime, the Government should endeavour to make the teaching of Holy Qur'ān compulsory for Muslims and to prescribe a course of theology to enable them to know what life in accordance with the Holy Qur'ān and Sunnah means. This provision would in no way prove effective in removing those evils of the existing system of education and training which have their roots in the un-Godly bases that form the bed-rock of the present system of education and training. We, therefore, deem it necessary that the following words be substituted in place of the existing words of this Sub-Clause.

**"The teaching of the Holy Qur'ān and Islamiyat be made compulsory for every Muslim and the system of education be so reformed that it may enable the Muslims to mould their lives in accord with the Holy Qur'ān and the Sunnah."**

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1. The original text of the Report is given in italics and the proposed one in bold type. Chapters, sections and clauses referred to are those of the Basic Principles Committee's Report.

**Section 2, Clause (2), Sub-Clause (b)**

*Prohibition of drinking, gambling and prostitution in all their various forms.*

The recommendations contained in this sub-clause of the Report are defective in two respects. Firstly, they prohibit only drinking and not the sale or manufacture of liquor and are even silent in regard to other intoxicants. Secondly, they do not fix any period for the eradication of the evils of drinking, gambling and prostitution. This leads to an apprehension that these evils may continue for an indefinite period in the Islamic State of Pakistan. We, therefore, deem it essential that the following be substituted in place of the existing words :—

“Intoxicants, gambling and prostitution in all their various forms, be completely prohibited through proper legislation within a maximum period of three years from the date of enforcement of the Constitution.”

**Section 2, Clause (4)**

*Suitable steps should be taken for bringing the existing laws into conformity with the Islamic Principles, and for the codification of such injunctions of the Holy Qur’ān and the Sunnah as can be given legislative effect.*

In this Clause, the authors of the Report have not prescribed any period for bringing the existing laws of the land into conformity with the Holy Qur’ān and the Sunnah ; hence it is apprehended that the existing un-Islamic laws might be allowed to remain in force for an indefinite period. This is intolerable and we, therefore, consider it necessary that this clause be amended to read as follows :—

(a) “Suitable steps should be taken to bring the existing laws into conformity with the Holy Qur’ān and Sunnah within five years.”

(b) “Arrangements should be made for the codification and enforcement of all such commandments and injunctions of the Holy Qur’ān and the Sunnah as are enforceable through legislation. Provided that laws regarding the personal matters of Muslims should be made in the light of such interpretations of the

Holy Qur'ān and the *Sunnah* as are held valid by the respective schools of thought among Muslims and the followers of one school of thought should not be bound to follow the interpretation of another, and that no such law should be made as may create obstruction in the performance of its religious rituals and duties."

#### Section 2, Clause (6)

*The State should endeavour to secure basic necessities of life like food, clothing, education and medical relief for those citizens of Pakistan, irrespective of caste or creed, who are temporarily or permanently incapable of earning their livelihood due to unemployment, infirmity, sickness or any other similar reason.*

The following wording in place of the present wordings of this clause would, in our opinion, be more appropriate.

"The State should endeavour to secure basic necessities of life like food, clothing, housing, education and medical relief for all citizens of Pakistan, irrespective of caste or creed, and particularly for those who are temporarily or permanently incapable of earning their livelihood on account of unemployment, infirmity or sickness or any other similar reason."

#### Section 2, Clause (7), Sub-Clause (a)

*The economic policy of the State should be so directed as to secure an all-round well-being of the people irrespective of creed, race or colour and should be so operated as—*

(a) *to improve the standard of living of the common man ;*

In this Clause it has not been specified that the economic policy of the State should be based on the Islamic principles of social justice ; hence the following should be substituted in place of the existing words :—

"The economic policy of the State should be based on the Islamic principles of social justice. It should be so directed as to secure an all-round well-being of the people irrespective of creed, race or colour and should be so operated.....

## Section 2, Clause (7), Sah-Clause (e)

*To ensure equitable adjustment of the rights of labour and the peasantry in order to prevent their exploitation.*

In this Clause, although the existing phraseology, i.e., "the rights of labour and the peasantry" lends itself to quite a wide interpretation, the question of compensation to the labour and peasantry being of great significance its separate treatment and exposition is essential. The standard of the compensation should be so fixed as to enable them to meet their basic requirements of life. We, therefore, are of the opinion that the sub-clause should be under :

"An equitable standard of the rights and compensation of the labour and peasantry be laid down to ensure that they are not deprived of their necessities of life or exploited."

## Section 2, Clause (10)

*The State should endeavour to discourage amongst the Muslims of Pakistan parochial, tribal, racial and other similar un-Islamic feelings and inculcate in them the spirit to keep foremost in their minds the fundamental unity and solidarity of the Millat and the requirements of the ideology and the mission for implementation of which Pakistan came into being.*

In this Clause the present wording of the Report is defective particularly in so far as there is no mention of linguistic prejudices. We, therefore, think that the following should be substituted in its place :—

"The State should discourage amongst the Muslims of Pakistan, the geographical, tribal, racial and linguistic and other similar un-Islamic feelings and inculcate in them the spirit to keep foremost in their minds the fundamental unity, integrity and solidarity of *Millat-i-Islamia* and the requirements of the ideology and the mission for the implementation of which Pakistan came into existence."

## Additions :

Besides the above amendments, we deem it necessary that the following additions be also made in the Directive Principles of the State Policy :

Section 2, Sub-Clause (f)

"Proper and effective arrangements should be made for the promotion of Islamic learning and culture."

Clause 7, Sub-Clause (d)

"The difference in the pay of high and low employees of the State should be brought to an equitable level."

New Clause

(a) The State should ensure that in the section, appointment and promotion of Muslim candidates and employees, Islamic character and observance of the tenets of Islam are given due consideration along with ability, efficiency and other relevant factors.

(b) "In the training of the Muslim employees of the State whether civil or military, special arrangements for their moral and religious training and education should be made, so that the moral standard of the State employees of Pakistan, as also their standard of efficiency, be high enough."

(c) "All facilities should be provided to the Muslim employees of the State for carrying out their religious duties and observing the tenets of Islam."

New Clause

"The propagation of atheism and infidelity and the insulting or ridiculing of the Holy Qur'ān or the *Sunnah* should be prohibited through legislation."

Chapter III—PROCEDURE FOR PREVENTING LEGISLATION REPUGNANT TO THE QUR'ĀN AND THE *SUNNAH*. \*

Section 3

*No legislature should enact any law which is repugnant to the Holy Qur'ān and the Sunnah.*

It is not enough to provide only in a negative manner that no law should be enacted which is repugnant to the Qur'ān and the *Sunnah*. What is required is that it should be laid down

as a matter of principle that the dictates and directives of the Qur'ān and the *Sunnah* should be the chief source of legislation in this State. Therefore the following should be added at the end of this section :—

“and the Qur'ān and the *Sunnah* be the chief source of the law of the land.”

#### Sections 4, 5, 6 and 8

4. *No objection on the ground that a legislation is in contravention of the provisions of paragraph 3 should be taken except in the Legislature concerned and in the manner provided for in the next two succeeding paragraphs.*
5. (1) *The Head of the State should constitute, for a period of five years, a Board consisting of not more than five persons well versed in Islamic Laws.*  
 (2) *When a Bill is discussed in a House of the Federal Legislature, if any Muslim member raises an objection, at any stage of the discussion, that the Bill or any provision thereof is in contravention of the provisions of paragraph 3, the Chairman of the House should record that objection.*  
 (3) *If the Bill to which reference has been made in sub-paragraph (2) of this paragraph comes up for discussion before the other House of the Federal Legislature the Chairman of the House should inform the House of any objection taken in the House in which the Bill has been initiated.*  
 (4) *When a Bill is finally passed by the Federal Legislature the authority concerned should forward the Bill together with any objection, taken in either or both the Houses of the Federal Legislature, to the Head of the State for assent.*  
 (5) *The Head of the State should consult the Board to ascertain whether the Bill of any provision thereof to which objection has been taken, is in contravention of the provisions of paragraph 3. The Board should send their views to the Head of the State within seven days of the receipt of such reference.*

- (6) *If a difference of opinion arises amongst the members of the Board the Head of the State should give his assent to the Bill or withhold his assent therefrom.*
  - (7) *If the Board is unanimously of the opinion that the Bill or any provision thereof is in contravention of the provisions of paragraph 3, the Head of the State, should return the Bill to a joint sitting of the two Houses of the Federal Legislature together with the views of the Board and a message that the Bill or any provision to which objection has been taken should be reconsidered on the lines suggested in the message.*
  - (8) (a) *If the Federal Legislature amends the Bill on the lines suggested by the Head of the State in his message, the authority concerned should forward the Bill to the Head of the State for his assent.*  
(b) *If the objection is to the whole of the Bill it should not be deemed to have been passed unless it is passed by the majority of the members present and voting which should include the majority of the Muslim members present and voting.*  
(c) *If the objection is to certain provisions of the Bill, amendments in respect of such provisions should not be deemed to have been passed unless passed by the majority of the members present and voting which should include the majority of the Muslim members present and voting.*
  - (9) *When the points raised in the message are disposed of in the manner prescribed in sub-paragraph (8) above, the Bill, unless it is withdrawn by the leave of the House, should be resubmitted to the Head of the State for his assent and it should be assented to by the Head of the State.*
6. (1) *The Head of the Unit should constitute, for a period of five years, a Board consisting of not more than five persons well versed in Islamic Laws.*

- (2) *When a Bill is discussed in the Legislature of the Unit, if any Muslim member raises an objection, at any stage of the discussion, that the Bill or any provision thereof is in contravention of the provisions of paragraph 3, the Chairman of the Legislature concerned should record that objection and when the Bill is finally passed by the authority concerned should forward the Bill together with any objection taken in the Legislature to the Head of the Unit for assent.*
- (3) *The Head of the Unit should consult the Board to ascertain whether the Bill or any provision thereof to which objection has been taken is in contravention of the provisions of paragraph 3. The Board should send their views to the Head of the Unit within seven days of the receipt of such reference.*
- (4) *If a difference of opinion arises amongst the members of the Board, the Head of the Unit should give assent to the Bill or withhold his assent therefrom or may reserve the Bill for the consideration of the Head of the State.*
- (5) *If the Board is unanimous of the opinion that the Bill or any provision thereof is in contravention of the provisions of paragraph 3, the Head of the Unit should return the Bill to the Legislature of the Unit together with the views of the Board and a message that the Bill or any provision to which objection has been taken should be reconsidered on the lines suggested in the message.*
- (6) (a) *If the Legislature of the Unit amends the Bill on the lines suggested by the Head of the Unit in his message the authority concerned should forward the Bill to the Head of the Unit for his consent.*  
 (b) *If the objection is to the whole of the Bill it should not be deemed to have been passed unless it is passed by the majority of the members present and voting which should include the majority of the Muslim members present and voting.*



- (c) *If the objection is to certain provisions of the Bill, amendments in respect of such provisions should not be deemed to have been passed unless passed by the majority of the members present and voting, which should include the majority of the Muslim members present and voting.*
- (7) *When the points raised in the message are disposed of in the manner prescribed in sub-paragraph (6) above, the Bill unless it is withdrawn by the leave of the House, should be resubmitted to the Head of the Units for his assent and it should be assented to by the Head of the Unit or he may reserve it for the consideration of the Head of the State.*
- (8) *The provisions of this chapter relating to assent should have effect notwithstanding anything to the contrary relating to assent to Bill in other parts of the Constitution.*

The device of setting up a Board of 'Ulamā, as proposed in this section, to avoid legislation repugnant to the Qur'ān and the Sunnah, far from being reasonable or effective is likely to prove a source of many a new evil. We fail to understand why the very same method which has been adopted to check legislation in contravention of the various provisions of the constitution, i.e., empowering the Supreme Court to interpret constitution should not be adopted in regard to the provisions of Section 3 as well. Of course, for the duration of such period as may be required to produce judges fully conversant with the Qur'ān and the Sunnah, in keeping with the new constitutional requirements, some transitional provision should be made to ensure correct interpretation of the Qur'ān and the Sunnah, for purposes of the provisions of Section 3. Therefore we demand that Sections 4 to 6 as well as Section 8 related therewith be deleted altogether and the following be substituted in their place :

1. To deal with constitutional objections raised under Section 3 against laws enacted by a legislature or other issues concerning interpretation of constitution in this behalf, there

should be appointed five '*Ulamā* in the Supreme Court who, along with some judge to be nominated for the purpose by the Head of the State in consideration of his '*adab* and *taqwa*' and his knowledge of Islamic law and learning, should decide whether or not the law in dispute is in conformity with the Qur'ān and the *Sunnah*.<sup>1</sup>

2. The appointment of the above-mentioned '*Ulamā* should be made in the same manner as has been proposed in the Basic Principles Committee's Report in regard to the judges of the Supreme Court.

3. Only such '*Ālim* should be qualified for appointment to this office as :

- (a) has worked in some religious institution as a Mufti for a minimum period of 10 years ; or
- (b) has been an accepted Mufti in some area for a minimum period of 10 years ; or
- (c) has worked as a Qadi in some duly established *Mahakamo-e-Qada* ; or
- (d) has been a teacher of *Tafsir*, *Hadith* or *Fiqh* in some religious institution.

## Section 7

*The provision of this chapter should not apply to Money Bills.*

We were extremely surprised to see this section of the Report and to note that the very persons who have accepted in Section 3 the principle that no law should be enacted which is repugnant to the Qur'ān and the *Sunnah* should have stipulated that the dictates of the Qur'ān and the *Sunnah* would be in-operative in regard to the financial matters of the State. If the State accepts the supremacy of the dictates and commandments of Allāh and His Prophet, as is evident from the wording :

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1. Three of the participants of the Convention disagreed on this point. Their view-point is appended at the end of these Amendments as Annexure No. 1.

of Section 3, there is no reason why the financial matters of the State should be placed beyond the jurisdiction of Allāh and His Prophet. Islam is the best guide for us in all matters. It is so in the case of financial problems too. We are not at all prepared to accept a clear vote of no-confidence against Islam in one of the Sections of our Constitution.

However, we do concede that for some time to come there might be some practical difficulties in adjusting the financial matters of the State according to the principles of Islam and for that it would suffice to provide that the provision of Section 3 should apply to money bills only after the expiration of a period of 5 years. Therefore, the present wordings of Section 7 of Chapter 3 should be substituted by the following :

"The provisions of this chapter should apply to money bills after the expiry of 5 years from the date of enforcement of the Constitution."

## Part II

### THE FEDERATION AND ITS TERRITORIES

#### Section 9 (1)

*The name of the State should be Pakistan which should be a Federation, of the Provinces including Baluchistan, the Capital of Federation, such States as have acceded or may accede to the Federation and such other areas as formed part of Pakistan immediately before the commencement of the Constitution or may hereafter be included in it.*

In Clause (1) of this section, 'Pakistan' has been proposed to be the name of the State. In our opinion this is not enough and the name should be Islamic Republic of Pakistan.

The presence of non-Muslim communities in Pakistan cannot be put forth as a valid objection against this name because if the presence of innumerable non-socialists in Russia does not prevent its being named 'Union of Soviet Socialist Republics' why should it stand in the way of Pakistan being called an Islamic Republic ? The appellation of Islamic Repub-

lio is just to indicate that it is a Republic which is based on the principles of Islam—something which has already been specified in the Objectives Resolution, and Section 3 of the Report too leads to the same conclusion.

Apart from this, the following additions should also be made in this section. After Clause (1), the following Clause should be added :

2. "The various zones or regions of the country shall be considered as administrative Units of a single State. They shall not be racial, linguistic or tribal units but only administrative areas which may be given such powers under the supremacy of the Centre as may be necessary for administrative convenience.

3. "The Units of the State shall not have the right to secede."  
Existing Clause (2) would thus be renumbered as (4).

## Part III

### *THE FEDERATION*

#### Chapter I—THE EXECUTIVE

##### Section 23, Clause (2)

*Appointment of the Election Commission and Election Tribunals.*

The power to appoint Election Tribunals has been categorised with powers which are to be exercised by the Head of the State in his discretion. In our opinion this is not proper. The maintenance of justice and fairness in elections is of immense significance to the existence of our State and like other matters requiring justice, this too should be entrusted to the Judiciary and kept immune from the interference of the Executive. Therefore the words 'and Election Tribunals' occurring in this Clause should be deleted.

Our alternative proposal in this behalf is to be found in the chapter relating to elections in Part XII.

##### Section 28, Clauses 2 and 3

(2) *The Prime Minister who, for a period of six consecutive months is not a member of the House of the People should at the*

*expiration of that period ceases to be the Prime Minister.*

(3) *Provision should be made for appointing as Minister a person who is not a member of either House provided that a person should cease to be a Minister unless he gets elected within a period of six months from the date of his appointment.*

These two clauses provide that even such persons as have not been elected to the Legislature may be appointed as Prime Minister or Minister and that they should try to get themselves elected after they are well in saddle for 6 months. This is highly objectionable and harmful. To place a person in authority and then provide him a chance to win his election might lead to the moral deterioration of the administrative machinery as well as of the voters. Therefore this door must be closed and both these clauses should be deleted.

The same wrong has been repeated in Clause (2) of Section 89 wherein provision has been made for unelected persons to be appointed as Chief Minister or Minister in a Unit and to be given a chance to get elected.

Therefore Clause (2) of Section 89 should also be deleted.

## Chapter II—FEDERAL LEGISLATURE

The manner in which the House of Units and the House of People have been proposed to be constituted is, in the opinion of this Conference, highly objectionable and exhibits the lack of principle in many respects. However, in view of the fact that the political leaders of the various provinces are carrying on negotiations in this behalf we do not deem it proper to stand in their way in any manner and propose to reserve our opinion on this issue.<sup>1</sup>

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1. As this Conference was held in January 1953 and the indications of an accord between the politicians were available, the Conference refrained from giving any suggestion in this respect. Later on the conflict was resolved in the form of the Parity Formula of Muhammad Ali of Dogra.—Editor.

## Section 40, Clause (1)

*A person should not be qualified to be chosen to fill a seat in the House of Units unless he—*

(i) *is a citizen of Pakistan :*

(ii) *has attained the age of thirty years ;*

(iii) *is able to read and write in some language ; and*

(iv) *is entitled to vote in the choice of a member to fill a seat in the Legislature of the Unit by which he seeks to be elected :*

*Provided that the provisions of clause (iv) should not apply in the case of a Unit which has no legislature of its own. In that case he must be a voter in a territorial constituency in that Unit for the House of the People.*

In this clause four disqualifying conditions have been enumerated in regard to a person proposed to be elected to the Legislature. So far as Muslim members are concerned, a fifth condition should also be added in the following words :—

*"is an observer of 'faraiz' and desists from 'fawahish'."*

## Section 40, Clause (1) sub-clause (iv)

The wording of this sub-clause is objectionable inasmuch as this implies that a member of the House of Units must necessarily be a resident of the very same Unit from where he is elected. This would be conducive to the perpetuation of provincialism among Pakistanis and therefore we propose that the present construction be substituted by the following :—

*"is on the electoral roll of any place in the State of Pakistan."*

The same is to be found in Clause 4 of Section 47 and it should also be modified on the above lines.

## Section 42, sub-clause (e)

42. *A person should be disqualified for being chosen as, and for being, a member of the House of Units—*

*e) If he has been convicted of any offence, other than those specified under sub-paragraph (d) above, before or after the commen-*

*cement of the Constitution, by a competent court in Pakistan and sentenced to life imprisonment or imprisonment for not less than two years, unless a period of five years has elapsed since his release.*

According to this sub-clause anybody who has been convicted of any offence and sentenced to imprisonment for a period of 2 years or over, would be disqualified for being chosen as a member of the House of Units. The term 'any offence' is too wide and would cover cases of persons convicted for political reasons. Therefore, we propose that the words 'any other offence' should be replaced by the words 'offence involving moral turpitude'.

Amendments on the same lines should be made in Section 48, sub-clause (e) and Section 102, sub-clause (e).

Section 42, sub-clause (g)

*If he has been dismissed for misconduct from service or from a post in connection with the affairs of the Federation or of a Unit unless a period of five years or such less period as the Head of the State may allow in any particular case, has elapsed since his dismissal.*

This sub-clause disqualifies a person for being chosen as a member of the House of Units, if he has been removed, from Government service on account of 'misconduct'. 'Misconduct' is too wide and vague a term and would cover cases of persons dismissed by a Party Government for political reasons even though they may not have been guilty of anything involving moral turpitude. Therefore, after the word 'misconduct' the following should be added :—

**"involving moral turpitude,"**

Amendments on the same lines should also be made in Sections 48 and 102, sub-clause (g)

Section 50, sub-clause (d)

*No person should be included in the electoral roll for vote at any election in any constituency—*

(d) *if he has been convicted of any offence other than those specified under sub-paragraph (c) above before or after the commencement of the Constitution by a competent court in*

*Pakistan and sentenced to life imprisonment or to imprisonment for not less than two years, unless a period of five years has elapsed since his release.*

This sub-clause also disqualifies anybody who has been convicted, by a competent court, of 'any offence' and sentenced to an imprisonment of 2 years or over. We have the same objection in this behalf as in regard to the provision of Section 42, sub-clause (c). Therefore, after the word 'offence' the words 'involving moral turpitude' should be added.

Section 106, sub-clause (d) should also be amended accordingly.

#### Section 66, Clause (1)

*A member of the Federal Legislature should be required to take an oath of allegiance to Pakistan. No member should take his seat in either House of the Federal Legislature until he has taken the prescribed oath.*

This clause provides for an oath of allegiance to Pakistan to be taken by the members of the Legislature. The members, we propose, should also affirm on oath that in all the proceedings of the Legislature they would exercise their vote honestly. Therefore after the words 'oath of allegiance to Pakistan' the following should be added :—

*"and also to the effect that he would exercise his vote honestly."*

The above should be added to Section 118, Clause (1) also.

## Part X

### JUDICIARY

The new sections to the following effect should be incorporated somewhere in this chapter :

(I) "In the appointment and promotion of every officer entrusted with adjudication, along with other relevant factors, the qualities of '*taqwa and tadayyua*' and knowledge of Islamic laws and learning through original sources, should be given due weight and treated as preferential factors.

This is necessary in view of the fact that in respect of the



qualities of 'taqwa' and 'tadayyun' Islam lays even greater emphasis in the case of officers entrusted with the dispensation of justice than in the case of the members of the Executive or of the Legislature. And once the principle has been accepted that the laws of the State are to be based on the principles and dictates of Islam, it is but imperative that those administering justice according to Islamic Law should possess adequate knowledge of those laws.

(2) "The Legislature or the Executive shall not have the power to appoint tribunals."

This is necessary because it is absolutely against the dictates of justice that the Executive should have the power, directly or through the Legislature, to set up, to serve its own interests, special Courts for specific cases or for cases of a particular nature, or to impose arbitrary restrictions upon their right of unfettered administration of justice. Many a had example of the objectionable manner in which such power has been exercised is before us. Therefore this method of appointment of tribunals should be constitutionally stopped and all sorts of suits should be referred to the duly established courts of justice in the country.

## Chapter I—SUPREME COURT

### Section 182

*The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, final order or sentence in any cause or matter passed or made by any court or tribunal in the territory of Pakistan ; provided that it should not be open to the Supreme Court to grant special leave to appeal against any sentence or order passed by any court or tribunal constituted by or under any law relating to the Armed Forces.*

This section deprives the Supreme Court of the power to grant leave to appeal against the decision of any court or tribunal constituted by or under any law relating to the Armed Forces. In our opinion, this restriction is against the dictates

of justice. If the Snpreme Court is to be the final Court of justice in our country, there is absolutely no reason why anybody in the State, whether civilian or belonging to the Military or any common citizen should be debarred from any access to that court for seeking justice therefrom. If a person is dissatisfied with the decision of Military Tribunal why, after all, should he not have the right to appeal to the highest Court of justice ? Therefore the following portion of Section 182 should be deleted :

**"Provided that.....relating to the Armed Forces."**

### **Section 186**

*Subject to the provisions made by the Federal Legislature the Supreme Court should, as respects the whole territory of Pakistan, have the power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document of the investigation or punishment of any contempt of court.*

This section provides for restricting, through legislation, the authority of the Supreme Court to call for any person or document for purposes of evidence. This clearly implies that if the legislature enacts any law to stop the Court from calling for evidences or documents of a particular nature, the Supreme Court would be unable to do so, howsoever necessary its examination may be for purposes of dispensation of justice. According to Islam, the Court has the right to call for evidence which is necessary for the dispensation of justice and it is not permissible for anybody in possession of such evidence to conceal it. Therefore, the following words occurring in this section should be deleted :

**"subject to the provisions made by the Federal Legislature."**

Also, the following should be added at the end of the section :

**"Provided that the Executive should have the right to request the court to make proper arrangements to ensure the secrecy of an evidence or document, the publicity whereof is, in the opinion of Executive, prejudicial to the safety and integrity of the State."**

## Chapter II—HIGH COURTS

## Section 205, Clause (2)

*Nothing in this paragraph should be construed as giving to a High Court any jurisdiction to question any judgement of an inferior court which is not otherwise subject to appeal or revision.*

The section is intended to curtail the jurisdiction of a High Court to the effect that it should not question the judgement of any subordinate court which is not otherwise subject to appeal or revision. In our opinion, this limitation upon the highest court of a Unit is detrimental to the proper fulfilment of the demands of justice. A High Court should have the fullest power to take cognizance of, and remedy, and shortcoming in the dispensation of justice that may at any time come to its notice in respect of its subordinate courts. Therefore, this clause should be deleted altogether.

## Part XI

## SERVICES AND PUBLIC SERVICE COMMISSION

Chapter I—SERVICES UNDER THE FEDERATION  
AND THE UNITS

## Section 222, Clause (1)

*No Bill or amendment to abolish or restrict the protection afforded to certain servants of the State in Pakistan by Section 197 of the Code of Criminal Procedure, 1898, or by Sections 80 to 82 of the Code of Civil Procedure, 1908, should be introduced or moved in the Federal Legislature or the Legislature of a Unit without the previous sanction of the Head of the State or the Head of the Unit, as the case may be.*

In our opinion, this clause is extremely objectionable. If the servants of the State of Pakistan are public servants and not the servants of the Head of the State or of the Head of the Units, there is no reason why the right of the representatives of the people to move any bill or amendment to introduce any change in respect of the rights, powers and privileges of such

servants should be conditioned by previous sanction of the Head of the State or of the Head of the Units.

As a matter of fact it is ignoble enough that so flagrantly unjust a provision as is contained in Section 197 of the Criminal Procedure Code or in Sections 80 to 82 of the Civil Procedure Code should be allowed to remain on the Statute Book of a free Pakistan ; And it is even more ignoble that in order to protect these Sections, the power of the legislators should be so restricted that they may not even move, except with the previous permission of the Head of the State or the Units, a Bill to amend or abolish any of these provisions.

Therefore this clause must be deleted.

## Part XII

### ELECTIONS

It is necessary that it should be provided by means of new section in this chapter that :

- (a) It should not be permissible for the Head of the State or the Head of the Units or Government officials to try to influence public opinion for or against any party or person in matters of election.
- (b) It should not be permissible, in matters of election, for the Prime Minister, the Chief Ministers, Ministers, Ministers of State, Deputy Ministers and Parliamentary Secretaries to use official resources or official pressure or influence public opinion for or against any party or person by means of official resources or official influence.
- (c) Seats falling vacant in the Central or Unit Legislature should necessarily be filled through by-election within a maximum period of 4 months from the date of their falling vacant.

#### Section 234, Clause (2)

*The Election Commission should consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the Head of the State may in his discretion from time to*

*time fix and the appointment of the Chief Election Commissioner and other Election Commissioners should, subject to the provisions of any law made in that behalf by the Federal Legislature, be made by the Head of the State in his discretion.*

This clause leaves the authority to appoint Election Commissioners to the discretion of the Head of the State just as in the case of the Chief Election Commissioner. So far as the appointment of the Chief Election Commissioner is concerned there appears to be no alternative, but with a view to ensure fairness and freedom in matters of election it would be proper to ensure that the entire Election Commission is not so constituted as to be protegee of the Head of the State.

Therefore we propose that the portion "*and the appointment .....in his discretion,*" be substituted by the following :

*"and the appointment of the Chief Election Commissioner and other Election Commissioners should subject to the provisions of any law made in that behalf by the Federal Legislature, be made by the Head of State respectively in his discretion and on the recommendation of Chief Election Commissioner."*

With a view to ensuring fair and free elections it is also necessary to add the following at the end of Clause (2) of Section 234 :

*"(1) The office of Chief Election Commissioner should be a permanent one and he should be entrusted not only with the work of general elections in the Centre and the Units but also with bye-elections in respect of seats falling vacant from time to time. It should also be his duty always to maintain an up-to-date list of voters."*

*"(2) The status of the Chief Election Commissioner should be the same as that of a Judge of the Supreme Court and he should be subject to the same disabilities as have been laid down in Clauses (2) and (3) of Section 227 in respect of the Chairman of the Public Service Commission."*

*"(3) Only such person should be appointed as Chief Election Commissioner as has worked as a Judge of a High Court for a minimum period of three years."*

## Section 239, Clause (2)

*The Election Tribunal should be appointed by the Head of the State or the Head of the Unit, as the case may be, in his discretion.*

This clause empowers the Head of the State and the Head of the Units to appoint Election Tribunals in the Centre and the Units respectively. As stated by us in the context of Section 23, this is detrimental to the free conduct of elections and therefore the existing Clause should be substituted by the following :

**"The power to appoint Election Tribunals for the Centre and the Units should vest respectively in the Supreme Court or the High Court concerned as the case may be."**

**SCHEDULE I****LIST I (FEDERAL)**

The following additional items should be included in List I :

(1) The determination, co-ordination and direction of the educational policy in accord with the Directive Principles of State Policy and the establishment of academic and educational institutions.

(2) The protection of the basic ideology and mission of the State in accordance with Directive Principles.

**LIST II (FEDERAL)****Item No. 3**

*Preventive detention in the territory of Pakistan for reasons connected with defence, external affairs or the security of Pakistan, persons subjected to preventive detention under the authority of the Federation.*

**LIST III (CONCURRENT)****Item No. 3**

*Preventive detention for reasons connected with the maintain-*

*ance of public order, or the maintenance of supplies and services essential to the community ; persons subjected to such detention.*

Item No. 3 as existing in these two Lists is highly objectionable. The power of preventive detention as exercised up till now has manifested itself in laws like the Safety Act and other Acts of similar nature which are not only repugnant to the *Shari'ah* but are also against commonsense and the universal concept of justice. Even those so eager to retain these powers have, during the days when they were powerless, been most vociferous in their protest against the use of laws like Safety Act. Therefore if the retention of Item No. 3 of Lists I and III of this Schedule is at all considered necessary, the following must be incorporated somewhere in the body of the Constitution.

"If any person is detained for reasons mentioned in item No. 3, Lists I and III of Schedule I, he should be produced before a court of law within 15 days of his arrest and given full opportunity of defence and it should be the authority of the court alone to determine the period for which he is to be held under preventive detention."

## *SCHEDULE II*

### **TABLE OF SEATS—HOUSE OF THE PEOPLE**

In this schedule the figure 88 in the column 'seats reserved for Muslims' against Punjab should be substituted by 87 and a new column, 'seats reserved for Qadianis' should be added. In this new column, figure '1' should be inserted against Punjab.

The following should be added to the notes to this schedule :

"(1) For filling up the seats of Qadianis in Punjab, Qadianis of other areas in Pakistan should also be entitled to vote and should be eligible for election."

"(2) A Qadiani is a person who professes to believe in Mirza Ghulam Ahmad of Qadian as his religious leader."

This is a very important amendment upon which we insist with all the emphasis at our command. It is in no manner

proper for the constitution-makers of our country to be oblivious of the peculiar conditions and the social problems confronting us in this respect and to frame a constitution on the basis of their personal views. They must not be unaware of how delicate and tense the situation has become in areas where a considerable number of Qadianis are living along with Muslims. They should not behave like our erstwhile rulers who did not care to take cognizance of the Hindu-Muslim problem until the four corners of undivided India had become blood-stained on account of the Hindu-Muslim disturbances. For our constitution-makers, belonging to this country as they do, it would be a tragic blunder that they should refuse to take notice of a problem which needs an urgent solution and wait until such time as they find that it has grown into a wild fire. What has added considerably to the delicacy of the problem is that while, on the one hand, Qadianis try to pose themselves as and mix with Muslims, on the other hand, they stand not only aloof from, but as rivals of Muslims by virtue of their creed, religious practices and collective organisation and openly dub all the Muslims as 'Kafirs'. The remedy even today lies in declaring them a minority altogether separate from the Muslims as had been proposed by the late 'Allāma Iqbal twenty years back.

Similarly, the words 'and Qadianis', should be added in the end of Section 1 of the Report of Minorities Committee.

The Report on Fundamental Rights too, which was presented in 1950 and hastily adopted, must be amended to the effect that the following portion occurring in Section 3 thereof is deleted :

"except in case of an external or internal threat to the security of the State or other grave emergency."

The above proviso is intended to suspend the right of *habeas corpus*. Islamic *Shari'ah* does not allow, in any circumstances whatsoever, that any Muslim or non-Muslim citizen should be deprived of his right to move the highest court for redress against unwarranted detention.

It is also necessary that Sections 4, 7 and 9 of the 'Funda-



mental Principles of an Islamic State' (Appendix No. I) formulated at Karachi in January, 1951, by accredited *'Ulamā* of various schools of thought are incorporated at some suitable place in the Constitution.

### Annexure No. 1

In our opinion Section 4 should read as under :

"In the event of an objection being raised against the interpretation and definition of the Qur'ān and the *Sunnah*, the matter should be referred to a Board of experts of Islamic Law (*'Ulama-e-Pakistan*) and the Legislature should be bound by the verdict of this Board."

Similarly in Clause (1) of Section 5 relating to the composition of the Board our amendments are as under :

"Pakistan Government should call for the name of the *Ulamā* of Pakistan from such religious organisations of *'Ulamā* as have been working on Central and Provincial levels in a regular manner since after the establishment of Pakistan and whose organisations are intact up till now and the Head of the State should notify their names."

If by the term 'experts of Islamic Law' are to be meant *'Ulama-i-Din'*, then they should have this much of dignity and power that their verdict is treated final and decisive. We do not agree with the proposal in its present form that just for the interpretation of the Qur'ān and the *Sunnah* *'Ulamā* should be associated with the Supreme Court as it is futile that they should be associated with the judges of the Supreme Court only for the interpretation of the Qur'ān and the *Sunnah*. However, if *'Ulamā* are appointed as Judges, i.e., *Qadis* to adjudicate upon important religious matters which become an impending necessity then it would be proper enough.

Signatories :—

Maulana Ahul Hasanat Qadri.

Maulana Mohammad Abdul Hamid Al-Qadri Badauni.

Mufti Muhammad Sahib Dad,

## Appendix III

### Comments on the Draft Constitution of 1956

AFTER the establishment of the second Constituent Assembly in 1955 the task of Constitution-making was restarted. Chaudhri Muhammad Ali presented his Draft Constitution in the beginning of 1956, Maulana Maududi, in consultation with his associates prepared detailed comments on the Draft and formulated concrete amendments to it.

Before releasing these comments for publication Maulana Maududi tried to ascertain the viewpoint of other important sections of the country and was satisfied that no material difference existed between their viewpoint and that of his own as contained in these comments. These comments and amendments are given in the following pages.—*Editor.*

# COMMENTS ON THE DRAFT CONSTITUTION OF 1956

## Part II.—FUNDAMENTAL RIGHTS

### Preventive Detention

In Part II the following things are highly objectionable :—

Under Article 7, Clause (4) of the Constitution Bill a party in power can arm itself with such repressive laws under which it may detain a person for any length of time without a trial and without providing him any opportunity for defence. This Article gives unqualified licence to the Executive to detain anybody for three months without any let or hindrance whatsoever. And for a longer detention the only restriction imposed is that his case will be put up (evidently *ex parte*) before an Advisory Board. Now, if the Board, appointed for this purpose by the Executive itself, opines that there exists sufficient cause for such detention, the Government may keep the accused in jail for as long as it may desire. Moreover, this Article authorises the making of laws under which people may be kept under detention for an unlimited period of time even without obtaining the opinion of an Advisory Board. We may be excused for this if we say that this article is much more oppressive than Article 22 of the Indian Constitution on which it appears to be based. Under the corresponding Indian Article, the Executive is at least bound to let the *detenue* know the grounds of his detention and to provide him with an opportunity to clarify his position before an Advisory Board. But here, in our Islamic Republic, which should have been more liberal and just than a non-Islamic State, the *detenue* is not being given even that much opportunity. We are of the view that detention of a person without trial and without providing him any, much less full, opportunity to defend himself is the very negation of justice. As a matter of fact there should be no place for preventive detention in an Islamic

Constitution. But if our rulers insist upon possessing this power it must necessarily be subject to the following conditions :—

- (i) that the person arrested under any such law shall be produced before a court of law within a period of 15 days and a definite charge brought against him ;
- (ii) he shall be afforded full facilities of defence ; and
- (iii) only a court of law, if satisfied as to the guilt of the accused, shall have the power to order detention and decide the period for which he should be detained. An Advisory Board, even if consisting of High Court Judges, cannot and should not, be given the power to express *ex parte* opinion against a *détenu* on the basis of mere police reports and without hearing the other side.

#### Restriction on Freedom

Articles 8, 9, 10 and 11 provide on the one hand, freedom of speech, assembly, association, movement and right to hold property, and on the other, power has been reserved for the making of laws which may impose all sorts of restrictions on these freedoms. In this connection too we may be excused for the statement that these four Articles of our draft Constitution are much inferior as compared with the corresponding Article 19 of the Indian Constitution. While the Constitution of India allows the imposition of only "reasonable restrictions" on these freedoms, our draft Constitution allows full liberty for the imposition of "any restrictions" on them. And this makes a world of difference in the two. It is evident that if the word "restrictions" is qualified by the word "reasonable" the matter becomes justifiable and the courts of the country can nullify or set aside any restrictions which are not found to be reasonable. On the other hand if allowance is made for the imposition of "any restrictions", as has been proposed in the said Articles, the matter will fall outside the jurisdiction of the courts and an unscrupulous party or group in power can get unlimited licence to suppress its opponents

by imposing "any restrictions" it likes on their freedom of speech, expression, assembly, association, movement and right to hold and dispose of property. It can even confiscate their property and crush them in whatever manner it likes.

*We, therefore, demand that in our Constitution the 'words "reasonable restrictions" should be substituted for 'any restrictions'.*

### Part III—DIRECTIVE PRINCIPLE: OF STATE POLICY

#### The Question of Interest

In Part III the following amendments should be made :—

Article 25 of the Constitution Bill is silent about the elimination of *Riba* (interest) while the corresponding Article of Constitution prepared by the previous Constituent Assembly provided for the "elimination of *Riba* as and when it may be possible to do so". Considered from purely Islamic point of view, practising of *Riba* is much more heinous a crime than gambling, use of liquors and prostitution. Islam views it with so much abhorrence that its culprits have been given ultimatum of war on behalf of God and His Prophet. In fact, of no other sin such a serious view has been taken by the Book of God. What then is the reason for deliberately excluding it from the Directive Principles of State Policy ?

#### Separation of Judiciary and Executive

Article 30 which provides for the separation of Judiciary from the Executive, does not give any time limit for the implementation of this clause. The former Constituent Assembly had fixed three years for this purpose. Why should not that be adhered to ?

### Part IV : Chapter 1—THE FEDERAL GOVERNMENT

The following provisions of this part are objectionable in our opinion and we regard them very dangerous for the country. We urge with all the emphasis at our command that they should be properly amended :—

In clause (3) of Article 32 it is provided that notwithstanding the expiration of his term, the President shall continue to hold office until his successor enters upon his office. No doubt there is a similar provision in Article 58 of the Indian Constitution also but that can be no argument for its incorporation in our Constitutions. We must frame our Constitution according to our own genius and the light of our own experience and our own principles of political behaviour. It will be enormously dangerous to constitutionalize the continuance in office (even for one single day without election) of a person who has been empowered to dissolve all and each of the three Assemblies which jointly constitute the electoral college for his election. The President must necessarily vacate his office on the expiry of his term. And in case the election for the Presidency is not complete by the end of his term, the vice-President may temporarily take over his duties. And in order to avoid the possibility of both the offices falling vacant at the same time the term of office of the President and the vice-President may differ. (For example, the first vice-President may remain in office for  $2\frac{1}{2}$  years).

### President's Unlimited Powers

Articles 35, 37 and 49 empower the President to dissolve the National Assembly and dismiss the Prime Minister. *This is obviously the way of dictatorship and not of democracy.* As provided in the Bill the President will not be directly elected by the people, but indirectly by the National and Provincial Assemblies. And to give him an unqualified and unlimited power to dismiss the Cabinet, and dissolve the National Assembly elected by the people (which is the electoral college for his own election), amounts to no less than arming him with the power to instal himself as a dictator. Any scheme which gives so much power in the hands of a single individual is absolutely unjustifiable and cannot be tolerated even for a single moment much less keep the door open to this danger for full six months. These provisions can at any time turn

the country into a hot-bed of conspiracies and intrigues, and an ambitious President with the support of a few ambitious highups in the services of the country can at any time turn the Cabinets and the Assemblies into mere playthings. The experience that we have had in the recent past of the use of this power should be sufficient to open our eyes. The provisions made under Article 36 to impeach the President and remove him from office cannot be relied upon as an effective safeguard against this danger. On the contrary, they may have a diametrically opposite effect and may incite a President to dissolve the National Assembly simply to forestall a move for his impeachment.

*We, therefore, plead that the President should not at all be given the power to dissolve the National Assembly or dismiss the Prime Minister. As regards the Prime Minister it should on the contrary be explicitly provided in Article 37 that he shall continue in office so long as he enjoys the confidence of the majority of the members of the National Assembly.*

### **President's Assent**

Article 56 as proposed in the Constitution Bill can create tiee in legislation. It should be so worded as to provide that in case the President wants to withhold his assent to any Bill; he should make a declaration to that effect within 15 days and should return the Bill to the Assembly with his message, if any, within a period of 30 days. It should also be explicitly provided that if the Bill is again passed by the Assembly with or without an amendment the President shall give his assent within a period of 15 days. Under the Article in its present form a President may delay a Bill passed by the National Assembly for any length of time.

Furthermore, it is nowhere provided that the President will exercise his powers other than his discretionary powers, on the advice of his Council of Ministers. This is a grave omission which should be rectified.

## Part V.—THE PROVINCES

## Governor's Powers

In this part the following changes are necessary :—

Clause (6) of Article 69 empowers the Governor to remove the Chief Minister of the Province from his office at pleasure. And Clauses (1) and (2) of Article 81 authorise the Governor to dissolve the Provincial Assembly in his discretion. The bestowal of these autocratic powers on the Governor is as wrong as the bestowal of these powers on the President under the aforesaid Articles 35, 37 and 49. In fact such unlimited powers of the Provincial Governors enhance the danger of dictatorship in the country manifold. Under the proposed Constitution the Governors are not to be elected by the people or even by Assemblies. They will be appointed by the President presumably in his discretion and hold office during his pleasure. It is not mentioned anywhere in the Bill that the President shall appoint or dismiss them on the advice of his Council of Ministers. Thus the Governors will be completely in the hands of the President who will exercise complete control over them. Now just imagine : the President is empowered to dissolve the National Assembly, dismiss the Prime Minister at pleasure and has the Provincial Governors with the authority to dismiss their Chief Ministers and dissolve the Provincial Assemblies completely under his thumb; furthermore, notwithstanding the expiration of his term, he can legally continue in his office until a successor who can be elected by the said Assemblies alone, is there to enter upon his office. *Does it require any argument to make one understand that with the help of these provisions democracy can be put to an end by one stroke of pen, and a period of six months which can legally intervene between the dissolution of Assemblies and their re-election is sufficient for manoeuvring the elections to the desired end ? Will it be advisable to keep the door open for such dangerous possibilities ? Therefore, here too, we plead that the Governors should not have the powers to dissolve the Provincial Assemblies or dismiss a Chief Minister.*



*The Chief Ministers must continue in office as long as they enjoy the confidence of the majority of their Assemblies.*

### **Governor's Assent**

Article 28 does not make it binding on the Governor that in case they wish to withhold their assent to a Bill they should make a declaration to that effect and return the Bill to the Assemblies with their message within a specified period. Moreover, no time limit is fixed during which the Governor must assent to a Bill which has been reconsidered and passed again by the Assemblies with or without amendment. *Therefore, here too, amendments similar to those suggested under Article 56 should be made in order to check undue delay in the passage of Bills.*

## **Part IX.—THE JUDICIARY**

### **Appeal Against Military Courts**

Article 170 empowers the Supreme Court to grant special leave to appeal from any judgment, decree, order or sentence of any court or tribunal in Pakistan. But it expressly bars the Supreme Court even from looking into the decisions and orders of the Military Courts and Tribunals. This is clearly contrary to justice. If the Supreme Court is to be the final repository of justice in the country, every aggrieved person whether a civilian or a military man should have the right to appeal for redress to the Supreme Court if he feels that any lower court (civil or military) has failed to do him justice. So far as we are aware, both in England and in America the highest courts of appeal have this power and there is no earthly reason why the Supreme Court of a country striving to become an Islamic Republic should not be given this power. *Therefore, the words "other than a Court or Tribunal constituted by or under any law relating to the Armed Forces" should be deleted from this Article.*

### **Appointment of Judges**

Article 174 lays down that the High Court Judges shall be appointed by the President after consultation with the Chief Justice of Pakistan and the Governor of the Province to which

the appointment relates. We consider the intervention of the Provincial Governor in the appointment of the Judges of the High Courts to be very objectionable. If the Judiciary is to be independent of the Executive, there is no reason why the heads of the Provincial Governments should have anything to do with the appointment of the High Court Judges who have to safeguard the rights of the people against the Provincial Executive also. It is wrong in principle as well as derogatory to the dignity of the High Court and may even exercise an unhealthy influence over the Court's powers to dispense justice in a free and unfettered manner. *Therefore, the words "the Governor of the Province to which the appointment relates" should be deleted from Article 174 (1).*

## Part XI.—EMERGENCY PROVISIONS

In this part of the Bill the following Articles are objectionable and should be properly amended :—

### Suspension of Fundamental Rights

Article 200 empowers the President to suspend certain or even all the fundamental rights as well as the right to move any court including the Supreme Court for the enforcement of rights conferred by Part II of this Constitution. *We are of the opinion that this, in conjunction with certain other Articles of this Constitution completes the scheme which makes the establishment of dictatorship possible at any moment. Just imagine the state of things : the President dissolves the Central and the Provincial Assemblies and dismisses the Ministers ; if the people try to protest against this he proclaims an emergency and imposes "any restrictions" on freedom of speech, expression, assembly, association, procession, and puts behind the bar "the more dangerous elements" including the deposed Ministers and influential members of the Assemblies ; bans the parties, if any, in the country and confiscates all their property. And if the people try to knock the door of judiciary for redress, the President under this Article suspends even this right of the people and this power of the*

*Courts including the Supreme Court. Perhaps only a miracle can save the country from dictatorship under these circumstances.*

Have the Hon'ble Members of the Constituent Assembly presumed that angels alone will be elected to the Presidentship of the country and that none throughout the country excepting the President—not even the Central Ministers, nor any of the 300 members of the National Assembly, nor the Judges of the Supreme Court—can be trusted in times of emergency? If the Hon'ble Members of the Constituent Assembly really hold this opinion about themselves and their nation what is the necessity of staging this show of democracy? The best thing in this case would be to just elect some angel as President and entrust to him with full confidence all the judicial, executive and legislative powers for life and then beseech him to nominate another angel to succeed him after his death.

We are fully alive to the need of setting some sort of restrictions on the fundamental rights and of the necessity of empowering the Executive, in times of emergency, with powers wider than those enjoyed by it in normal times, but no human being should be given such absolute powers a little misuse whereof may endanger the very freedom and liberty of the entire nation.

### **Proclamation of Emergency**

Under Clause (2) of Article 203 it has been provided that the validity of any proclamation of emergency shall not be questioned in any court. We are of the view that the jurisdiction of the Supreme Court to see into the validity of this matter should not be harred. *When the circumstances which can justify the proclamation of an emergency have been described in Article 199, there must necessarily be some court in the country which should have the powers to judge whether these circumstances did or did not in fact exist at the time of the proclamation.* Furthermore, there should exist some remedy in the Constitution against an unjust proclamation of emergency specially when the National Assembly too is not in existence. *Therefore, the words*

"other than the Supreme Court" should be added at the end of Clause (2) of Article 203.

## Part XII.—GENERAL PROVISIONS

### Islamic Provisions

Chapter I of this Part deals with the Islamic Provisions, and Article 205 forms the only basis on which will rest the possibility or otherwise of establishment of an Islamic Order in the country. Therefore, this Article deserves our special attention and it is our duty to carefully consider whether this Article helps and if so, to what extent, the achievement of the objective which prompted the demand for an Islamic Constitution.

Clause (1) of this Article declares that 'no law shall be enacted which is repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and the *Sunnah* and the existing laws shall be brought into conformity with such 'Injunctions'. This provision in itself is no doubt most satisfactory. But the following Clause (2) lays down that effect shall be given to the provisions of Clause (1) ONLY in the manner provided in Clause (3). And Clause (3) is as under :—

"(3) Within one year of the Constitution Day, the President shall appoint a Commission :—

- (a) to compile, in a suitable form, for the guidance of the National Assembly and Provincial Assemblies such Injunctions of Islam as can be given legislative effect, and
- (b) to make recommendations :—
  - (i) as to the steps and stages by which the Injunctions of Islam should be given effect ; and
  - (ii) as to the bringing of the existing laws into conformity with the said Injunctions.

The Commission shall submit its final report within 5 years of its appointment, or may submit any interim report earlier.

The report, whether interim or final, shall be laid before the National Assembly within six months of its receipt, and the Assembly after considering the report shall enact laws in respect thereof."

When we ponder over the procedure enumerated in Clause (3) of this Article we feel that this Clause takes away almost all that was provided for in Clause (1).

In this scheme the following four drawbacks are quite evident :—

*Firstly*, even after the Constitution Day for at least seven years there will be 'full liberty' for the making of laws repugnant to the Holy Qur'ān and the *Sunnah* and Clause (1) of this Article with all its comprehensiveness will not be able to affect such legislation in the country in any way.

*Secondly*, even after the lapse of this period of seven years it will not be open to anybody to challenge any law in any court on the ground of its repugnancy to the Qur'ān and the *Sunnah*, because the word "ONLY" in Clause (2) prohibits that also.

*Thirdly*, the Injunctions of the Qur'ān and the *Sunnah* once compiled by the Commission appointed by the President, will presumably serve as the sole source of Islamic Law and it will not be open to argue against any law from outside it even on the basis of the Holy Qur'ān and the *Sunnah*, as the word "ONLY" appearing in Clause (2) will preclude that also.

*Fourthly*, it is true that after six and a half years the report of the Commission shall be laid before the National Assembly, but it will still depend on the sweet will of that Assembly as to what extent it should take cognizance of that report in enacting laws, and how long it should take in bringing the existing laws into conformity with the said injunctions.

These are the reasons which compel us to submit that the proposed Article in its present form instead of meeting the demand of the people for an Islamic Constitution practically amounts to an attempt to hoodwink or at least delay it for an unknown period. We do not at all allege that this is the result of any such deliberate attempt. On the other hand we are confident that the framers of this Bill had no such intention. Therefore, we hope that they will welcome suggestions to make this Article more effective and practicable for securing the desired end. It is with this in view that we suggest the following form for this Article :—

“Article 205. (1) No law shall be enacted which is repugnant to the injunctions, directives and the basic teachings of the Holy Qur’ān and the *Sunnah* (hereinafter referred to as the Injunctions of Islam) and if any objection is raised in any legislature that a Bill or any part of it is repugnant to the Islamic Injunctions, it shall be decided upon by the majority of the Muslim members of that Assembly.

(2) In the case of Money Bills effect shall be given to the provisions of Clause (1) of this Article in the manner prescribed in Clause (4) below.

(3) The existing laws shall be brought in conformity with the Islamic Injunctions, in the manner prescribed in Clause (4) below.

(4) Within a year of the Constitution Day the President shall appoint a Commission consisting of equal number of experts of Islamic law and experts of modern law and administration to :—

(a) compile in a suitable form an authentic code of Islamic Injunctions for the guidance of the National Assemblies, and

(b) make recommendations :

(i) as to the steps and stages by which Clause (1) of this Article may be applied to the Money

Billa, and

- (ii) as to what improvements are desirable in the existing laws from the Islamic point of view and the steps and stages by which they should be brought in conformity with the Islamic Injunctions within a maximum period of ten years.

This Commission shall present a report each year, and will complete its work within five years of its appointment. The annual reports of the Commission shall be presented before the National Assembly within six months of their receipt and the Assembly, after studying them, shall enact such laws as may be necessary under Clauses (2) and (3). The Clause (4) of the existing Article 205 may be numbered as Clause (5) and the last explanatory note retained as such.

Our above-mentioned proposal, on the one hand, solves all those difficulties for the solution whereof authors of the draft Constitution have worded Article 205 in its present form and, on the other hand, it does away with all the drawbacks that we have pointed out above. Now the only question that remains to be solved is as to who should act as a final authority to decide whether a law is or is not in conformity with Islam ; the Supreme Court or the Legislature itself ? We are of the view that *the best solution is the same which was unanimously proposed by the Conference of 33 'Ulamā in 1953, i.e.,* like all other constitutional disputes, the dispute as to whether a law is or is not in conformity with the Islamic injunctions should be decided by the Supreme Court and for the first 10 or 15 years five 'Ulamā should be appointed to help the Supreme Court in deciding such disputes. Anyhow, if the members of the Constituent Assembly are not at all prepared to accept this proposal then *the only acceptable solution is to leave it to the decision of the majority of the total number of Muslim members of the Legislature.*

## PART XII : CHAPTER V—MISCELLANEOUS

The following Articles too, are objectionable and should be suitably amended :—

**Martial Law**

Article 214 will, for the first time in our constitutional history, confer constitutional basis for the imposition of Martial Law in the country. Even in the British days the Constitution was silent in this respect. A provision in the Constitution for the imposition of Martial Law is not objectionable in itself, what is being objected to is the way it is being provided for. On the one hand the Article is silent as to the circumstances in which Martial Law may be imposed, and does not impose any restrictions on its nature, extent or duration, and on the other, it empowers the parliament without any restriction not only to indemnify any person in respect of any act done during Martial Law but also to validate all sentences passed, punishments inflicted, forfeitures ordered or other acts done by the Martial Law authorities. *The fact becomes all the more painful when we observe that our constitution-makers do not seem prepared to allow even as much latitude to their own nation as its British conquerors allowed it in the worst of times.* Regulation 10 of 1804 which the British Government promulgated at a time when it was at war with the people of India, empowered the Government to impose Martial Law only in the following two cases :—

(i) In case of war, or

(ii) open rebellion in the country.

And even under these circumstances it permitted the military courts to try only those persons who were arrested while taking part in an armed revolt against the Government or were caught openly helping the enemy. With the exception of these two types of people, with respect to all others, however seriously involved, Lord Wellesley issued clear instructions that the military officials could only arrest and detain them for delivery to the civil authorities for trial. Moreover, Indemnity



Acts passed by the British Government always indemnified only those acts of the authorities which might have been performed in good faith. But our Constitution Bill neither prescribes any conditions for the imposition of Martial Law, nor places any limit on the powers of the Military Courts, nor qualifies the acts to be indemnified with the epithet of "*done in good faith.*"

*The Hon'ble Constitution-makers should not forget that they are making a Constitution not only for their country and nation but also for themselves and their coming generations. We, therefore, request them to amend this Article in the light of the following suggestions :—*

(1) Only those acts should be allowed to be indemnified which may have been performed in good faith and were necessary for the restoration of law and order.

(2) There should either be no provision for validation of sentences, punishments and confiscations inflicted or ordered by the Martial Law authorities or a right of appeal against them in the High Court or Supreme Court must be granted ; and

(3) At the end of this Article, the following clauses should be inserted :—

(a) Martial Law can be imposed through a proclamation by the President :

(i) in case of open rebellion in the country and when the civil authorities have failed to restore order or,

(ii) in times of war for purposes of defence.

(b) Martial Law shall remain in force only so long as the civil authorities are not able to take over the administration.

(c) The Martial Law authorities shall do no more than the restoration of law and order,

(d) The Martial Law Courts shall have no jurisdiction over civilian citizens unless arrested in an armed

revolt or found actually helping the enemy.

- (e) Martial Law regulation or orders shall not apply to acts done before the promulgation of Martial Law.

**WITHOUT THESE AMENDMENTS THIS ARTICLE CANNOT BE ACCEPTABLE.**

Article 216 gives absolute powers to the President to pardon or commute sentences passed by any court or authority. This power of the President, too should be exercisable within the limits prescribed by the Holy Qur'an and the *Sunnah*. This was what the former Constituent Assembly had provided in its draft and there is no reason why the present Assembly should depart from that.

## Part XII : CHAPTER 6—INTERPRETATION

### Oath

Article 224 lays down that where under the Constitution a person is required to take or subscribe an oath, he may make and subscribe an affirmation. This Article should apply to the non-Muslims only. A Muslim must take the prescribed oath. Therefore, the words "*other than a Muslim*" should be inserted after the word "*person*" in this Article.

## SECOND SCHEDULE

The forms of oath proposed herein require revision. Many important components of the oaths prescribed by the previous Constituent Assembly have been omitted from the forms prescribed by this Schedule. There is no reason why the Muslim signatories should avoid the taking of these oaths. We, therefore, demand that the forms of Oaths prescribed in this schedule be brought in conformity with those proposed by the former Constituent Assembly.

**FOURTH SCHEDULE: PART II****Disqualifications**

All persons sentenced to two or more years of imprisonment have been disqualified for being elected as members of the National and Provincial Assemblies. *This disqualification should be limited to only those persons who may have been imprisoned for committing any offence "involving moral turpitude."* The former Constituent Assembly had accepted this proposal in the proposed draft.

**SOME ADDITIONS****Pacts and Agreements**

It should be expressly provided in the Constitution that Pacts and Agreements with foreign countries shall be placed before the Parliament for approval and ratification.

**General Elections**

The Constitution should also lay down the time-limit within which after the Constitution Day, general elections shall be held throughout the country.

## Appendix IV

### Comments on 1956 Constitution

The Second Constituent Assembly of Pakistan passed 'The Constitution of the Islamic Republic of Pakistan' on 29th February, 1956 and the Governor-General gave his assent to it on 2nd March, 1956. This Constitution was enforced from 23rd March, 1956. Maulana Maududi's views on it can be known from the Resolution moved by him in and adopted by the Majlis-e-Shura (Central Executive Council) of ex-Jamaat-e-Islami, Pakistan on 18th March 1956 in Lahore. Because of its historic value this Resolution (which was released to the Press in the form of a statement of the said Majlis) is reproduced here in this Appendix.—*Editor*.

## COMMENTS ON 1956 CONSTITUTION

LAHORE, March 18: Majlis-e-Shura, Jamaat-e-Islami, Pakistan, has issued the following Press Statement on Pakistan's Constitution :

MAJLIS-E-SHURA, Jamaat-e-Islami, Pakistan, offers thanks to Almighty God that after a long struggle stretching over eight years and passing through various dangerous stages the question of the future Constitution of the country has, at long last, been settled in a manner which, to a great extent, the aspirations of Islam-loving democratic people. In spite of all its drawbacks the Constitution of the Islamic Republic of Pakistan as passed by the Constituent Assembly on 29th February and assented to by the Governor-General on 2nd March, 1956 is for several reasons acceptable and satisfactory.

Firstly, with the coming in force of this Constitution the period of our slavery in this country finally comes to an end. The sovereignty that was transferred to us in August 1947 from the British Parliament, did not directly devolve on the people of Pakistan. Instead of that it was entrusted to the Constituent Assembly and it was left to that body to decide in what manner or shape it should be transferred to the people. For a number of years the Constituent Assembly felt reluctant to relinquish this sacred trust to its rightful recipients. When at last under public pressure it was just on the verge of transferring the trust to the real beneficiaries, the then Governor-General dissolved it in October, 1954 and, as a result of a judgment of the Federal Court, the sovereign power of the country was declared to vest not in the Constituent Assembly which could be said to possess some representative character, but in the Governor-General who represented nobody and was himself appointed by the British Crown. Thus our Freedom was, as a matter of fact, mortgaged, first, with the Constituent Assembly and

thereafter with the Governor-General. Now the assent of the Governor-General to the Constitution of Pakistan is tantamount to an act of redeeming the mortgaged freedom of the country after which we are, now for the first time, to really have our share of the blessings of freedom. Consequently, should such an opportunity present itself even with some discount, no well-wisher of this country will refuse to avail of it.

Secondly, the Preamble of the Constitution, its Directive Principles and Article 198 of the Constitution have finally and unequivocally settled the 8-year old struggle between the Islamic and anti-Islamic trends in favour of the former. And the fact that the future system of life in this country has to be shaped on the basis of Islam and that the Qur'an and the *Sunnah* shall ever reign supreme here has been so firmly embodied in the Constitution of the country that no worldly power shall, *Insha Allah*, be able to obliterate it. This in itself is a great victory for which all *Ahle-Iman* (believers i.e., Muslims) should feel felicitated and thank Almighty God. After nearly 200 years of domination of 'Kufr' it is for the first time that the sovereignty of Almighty God and the legal supremacy of High faith (*Deen*) has been acknowledged in our Constitution. Again, it is for the first time that this epoch-making decision has been incorporated in the Constitution of the State that un-Islamic laws will not be valid, that all laws of the British period will be brought in conformity with the Qur'an and the *Sunnah*, and that no legislation which is repugnant to the Holy Qur'an and the *Sunnah* shall be enacted in future. Not only that, it is for the first time after the *Khilafat-e-Rashidah* that the governmental authority of an Islamic State has passed into the Hands of the common people instead of royal families. This great revolution has indeed changed the course of history and has given birth to new era which, if we desire (and God helps us) can, with the grace of God, be turned into a second golden age in the history of Islam. No doubt, the method of implementing these provisions is not commensurate with their grandeur; and it is a pity that the methods of making these

provisions effective as suggested by the Islamic parties have not been accepted. Furthermore, the methods proposed in the new Constitution is such as will be effective only if right sort of persons are elected by the electorate. Anyhow, if the Islamic ideology is supported by an awakened and strong public opinion, and the people continue to return such representatives in the coming elections as are capable of and determined to work for Islam, then even this method can be utilised to achieve such results as would transform Pakistan into an ideal Islamic State in a few years.

Thirdly, from a democratic point of view too the Constitution is to a large extent satisfactory. The balance between the Executive, the Legislature and the Judiciary has been almost equitably and fairly maintained; in the form of an Election Commission, a very good provision has been made for holding elections; proper checks have been provided to prevent the political parties from unduly interfering with and influencing the Services; and not much niggardliness has been shown in conceding the fundamental rights to the people and guaranteeing their enforcement. Although along with these bright spots the Constitution has a good many objectionable features also—some of which are very dangerous indeed—for instance, preventive detention, complete suspension of fundamental rights during an emergency, unlimited powers of promulgating Martial Law and enacting indemnity laws disqualifying a person sentenced to imprisonment of two years or more from being elected to the Assembly irrespective of whether he may have been sentenced for committing an offence involving moral turpitude or on political charges, and absolute powers of the President to grant pardon and reprieve which may even transgress the limits prescribed by God, yet all these and other defects (not enumerated here) cannot constitute a sufficient or valid ground for rejecting the Constitution especially as the methods provided for amending the Constitution is quite easy. It is open to the people at any time in future to elect such representatives as are prepared to run the adminis-

tration of the country without the help of repressive laws and undue authority and thereby remove these black spots of the Constitution.

Fourthly, this Constitution has to a very great extent satisfactorily settled the controversy over the distribution of powers between the Centre and the Provinces which had been raging for a long time and which had particularly created dangerous conditions in East Pakistan. The distribution of powers has now been effected in such a balanced manner that, while the Provinces have been given practically all the necessary powers, the Centre has not been allowed to be weakened so as to endanger the solidarity of the country in any manner. All the same, if experience shows any defects in this distribution of powers and the practical requirements of any part of the country call for a change therein such a change will not be very difficult due to the flexibility of the Constitution. Hence no present or future defect of the Constitution can be reasonably made a ground for rejecting the whole of the Constitution.

It is for these reasons that Majlis-e-Shura of Jamaat-e-Islami, Pakistan accepts this Constitution and would also advise all well-wishers of the country to accept it in all sincerity. At the same time the Majlis appeals to all those people who are anxious to see Pakistan develop into a full-fledged Islamic State, that, in order to ensure the successful working of this Constitution and to make it an effective means for the achievement of the real object in view, namely the establishment of the Islamic Order, they should continue working with the same unanimity of opinion and unity of action which has brought this success to them in their struggle for the framing of an Islamic Constitution.

The Constitution would produce no useful results unless and until our entire social set-up, with all its various components, is morally prepared to see that the Constitution does work as a successful Islamic Constitution and unless our masses develop the ability to elect the right type of persons



translating it into action. This calls for concerted efforts on the part of all sincere Muslims. Mutual recriminations amongst various groups over petty trifles would prove disastrous. Unity and solidarity are all the more necessary now especially as an all-important constitutional issue, the nature of electorates, still remains undecided. And this question has not only been left undecided to be tackled by the National Assembly only, but it has been made incumbent upon the Assembly to ascertain and consider the views of the Provincial Assemblies also. In this disconcerting state of affairs those who stand for an Islamic Constitution cannot in any way afford to relax their efforts at this stage. We should all stand as one man and work hard to see that the issue is conclusively decided in favour of separate electorate and the designs of introducing the system of joint electorate are buried deep once for all. This would be impossible of achievement unless public opinion is so thoroughly mobilized against joint electorate in Pakistan as well as in West Pakistan that none but those prepared to commit political suicide should dare to vote for it.

## Appendix V

### White Paper on the Problem of Electorates

THE Jamaat-e-Islami, Pakistan issued a "White Paper on the Problem of Electorates" in January 1958. As this document has become a part and parcel of the political history of Pakistan and as it presents the electorate problem in its manifold aspects we deem it advisable to include it as an Appendix in the present volume.—*Editor.*

# WHITE PAPER ON THE PROBLEM OF ELECTORATES

1. The country is faced with a critical situation today. Political horizon is overlaid with dark and dismal clouds. Instability has become the order of the day. Decisions are being taken in utter disregard of the wishes of the people. People, the real deciding factor, the real authority, have been relegated into oblivion, while the so-called representatives of the demons are ruling just through intrigues, conspiracies and unholy alliances. Economic situation is worsening every day. Political scene is becoming more and more confused. Social conditions are deteriorating like anything. Disruption within and disrepute abroad, this is the situation today.

The confidence of the people has been shaken to its very roots. They have no faith in the leadership. They have a deep and sincere feeling that they have been betrayed. Not only they have not been given the chance of electing their own leadership during the last ten years *but conspiracies have been hatched to permanently deprive them of their right of choosing their real representatives in an honest, clear and fair way, by clamping upon them a system of electorate which so confuses elections that mostly the intriguers and the vested interest will emerge successful out of it. This is the mightiest and the most outrageous conspiracy to corrupt the political system and vitiate elections for all times to come. It will deprive the people of ever getting a chance to have a government of their own choice.* The time has come when the facade of this ugly conspiracy should be torn asunder and a united effort be made to protect the constitution and lay the foundations of real democracy in the country.

2. Muslim India has always stood for the ideal of its separate nationhood. In Islam there is no place for the narrow, chauvinistic idea of territorial nationalism. Muslims realised

their separate entity and in 1906 demanded separate electorates. The demand was accepted (in 1909) and despite all the machinations and manoeuvrings of the Hindus, the Muslims succeeded safeguarding this system. Mr. Jinnah's famous Fourteen Points included the demand that "the representation should continue to be by means of separate electorates, as at present" and a further elucidation of the point was made in the fifteenth point added later on, which unequivocally declared that the system of "Separate Electorate is inevitable". This demand was not based merely on any time-bound regard for political protection but was definitely an outcome of the realisation of the separate nationhood of Muslims. It is clearly borne out in what Qaid-e-Azam said in November, 1945 :

"We (the Hindus and Muslims) are different in everything. We differ in our religion, our civilization and culture, our history, language, our architecture, music, jurisprudence and our society, our dress—in every way we are different—*We cannot get together in the ballot box*".

That is why after partition the issue naturally remained settled. People never had even the slightest idea of effecting any change in the system. Elections in the Punjab, N.W.F.P., Sind and East Pakistan were held on this basis. The Liaquat Ali Khan Report (1950) presented this principle. The Nazimuddin Report (1952) was based on it. Muhammad Ali Bogra Report (1954) envisaged this very principle. In the East Pakistan elections, held in March 1954, no reference was made to it and the twenty-two points of the United Front do not mention it directly or indirectly. The principle of parity was adopted during this period but no mention of any change in the principle of electorate was made in that either. After the dissolution of the first Constituent Assembly Mr. Suhrawardy joined the cabinet and got the principle of parity accepted by his East wing colleagues, but not the slightest reference was made to the reopening of the issue. The formation of one Unit was effected in 1955 and here too no reference was made to the issue of electorates. Even when the Awami League

opposed the One Unit bill, no mention was made of this issue. The only thing with which the One Unit bill was linked, was the principle of parity. So the history shows, that the issue of electorates was never a disputable issue in the eyes of the Muslims of Pakistan and even in their political circles it never arose for reconsideration. Nor was this issue linked up with any other question, be that of Parity or One Unit or any thing else.

3. It may be asked that if this is so then how and when did this question arise and assume so much importance ?

The fact is that the Hindus have been trying to impose joint electorates over the Muslims of the sub-continent from the very outset. Like us, for them too the problem of electorates is an ideological issue. They want to erect the polity on the foundations of *secularism* and *territorial nationalism*, and joint electorate is an important and effective device in their scheme of things. Not only that ; the system of electorate is of significant importance in a modern state. It acts as the very foundation upon which the political institutions are based. It is an integral part of the political structure and cannot be detached from it, because it is the ladder by means of which the political leadership emerges in a modern polity and controls all the organs of the state. Hindus realised this significance of the electorates and fought tooth and nail against the Muslims' demand for separate electorates, so much so that when the Muslims succeeded in getting this demand accepted in 1909, they devoted all their energies to undo it. And when they formulated their draft constitution of the country in the form of the 'Nehru Report', they incorporated therein the principle of joint electorates and were not prepared to effect any change in that.

Despite the partition of the country and the vindication of the Muslim view-point they refused to reconcile themselves to the basic approach of the Muslims of Pakistan. This was fully realised by Quaid-e-Azam himself and after carefully studying the trends that set in, he declared that :

"Before we could assume the reins of office, non-Muslims started pulling out of Pakistan, which subsequent events have proved, was part of a well-organised plan to cripple Pakistan". (October 1947).

"We have been the victims of a deeply laid and well-planned conspiracy executed with utter disregard of the elementary principles of honesty, chivalry and honour". (October 1947).

"Minority Communities must not by mere words but by actions show this that they are truly loyal and they must make majority community feel that they are true citizens of Pakistan". (June 1948).

"It is now perfectly obvious that, having failed to prevent Muslims from achieving Pakistan, these agencies are now trying to disrupt Pakistan from within by insidious propaganda aimed at setting brother Muslim against brother Muslims". (March, 1948).

Thus, instead of reconciling themselves to the basic ideology on which Pakistan is based, they began to assail it from within. They tried to raise the slogan of joint electorates on the first opportunity that they got. In 1951 when an amendment to the fifth and sixth schedule of the Government of India Act, 1935, was being discussed in the Constituent Assembly and the principle of adult suffrage was being adopted Hindu leaders girded up their loins and Mr. Raj Kumar Chakravarty, without paying any heed to the relevancy of the issue, declared :

"Sir, we all want—especially the minorities—joint electorates, not only in Sind but also in East Bengal. But I find that an important omission.....The more of the Bill should also have moved for the system of joint electorates without reservation.....I want to raise here the question that in Bengal we are very keen about the system of joint electorates without reservation".<sup>1</sup>

They failed to convert anybody to their view-point. But

1. *Constituent Assembly of Pakistan Debates*, Volume IX, No. 2, p. 31.

despite the failure they continued their campaign singlehanded. Then came that unfortunate period of our history when political wranglings and power-politics divided the Muslims into half-a-dozen groups and the balance of power went into the hands of the Hindus. Being in possession of the balance of power they tried to sell out a heavy price of their support. In August 1955 Central as well as East Pakistan Ministries were formed with the support of the Hindus. And the Muslim parties which joined these Ministries were prepared to harter away even the ideology of Pakistan for the votes of the Hindus! Mr. B.K. Das, leader of the Congress Party, while giving reasons of their participation in Government said on September 6, 1955 :

"The Pakistan National Congress has throughout been fighting for the acceptance of the principle of Joint Electorates and a constitution for the country fully democratic in outlook..... At present, however, there are signs discernible that the reasonableness of our demand from the standpoint of the larger interests of the state stands recognised by the parties as they have recently emerged in both the wings... We were eager to take advantage of the changed circumstances and decided to work in co-operation with all sections and communities". (*Dawn*, Sept. 6, 1955).

That was how and when the electorate issue was raised. And it was done at the instance of Hindus and Hindus alone. The "changed circumstances" were more congenial to them and they "took advantage" of this situation. Now they had with them from amongst the Muslims themselves certain advocates of their viewpoint.

4. On the very first signs of this deal Jamaat-e-Islami raised its voice against it. Maulana Maududi warned against this secret compromise and asked the people to defeat this machination of the schemers. On 2nd September 1955 he issued a statement against this move and condemned it in unequivocal terms. In November, 1955, on the occasion of the Annual Conference of Jamaat-e-Islami, Maulana Maududi again warned against the dangers of this move. The public opinion

was so vehement against this move that the framers of the Constitution had to defer final decision on this issue. A provision was made in the Constitution that the system of electorate will be decided by National Assemblies. The West Pakistan Assembly voted in favour of separate electorates and the vote was almost unanimous, only 10 persons dissenting in a House of 310. The East Pakistan Assembly is alleged to have decided in favour of joint electorates. But this decision (if at all taken) was made with a very small margin and that too with support of about 60 Hindu votes, against the wishes of a large majority of the Muslims members of the Assembly, and worse of all, in a House which was in a state of utter chaos because of coercion, intimidation, and even manual interference from the galleries filled with Hindus and *goondas* of the ruling clique.

Then a week later when the matter came before the National Assembly it evolved a most dangerous and nonsensical formula. It adopted Joint Electorates for East Pakistan and Separate Electorates for West Pakistan. This was done at a time when practically the whole of the country was demanding separate electorates. Section 144 was clamped on Dacca to stop the people from voicing their views and *goondas* unleashed upon them to give them some lessons in law and order. The Republican Party which only a couple of days earlier had most unequivocally assured to stand by its own and the nation's unenimous decision in favour of separate electorates, overnight took a somersault under pressure from the President and the West Pakistan Governor who had flown to Dacca. It colluded with people bent upon undoing Pakistan and its basic ideology simply to retain power and voted for the said foolish formula. Everybody knows how even the open enemies of Pakistan laughed at this and questioned the justification for Pakistan thereafter. And finally in April 1957 the Republican-Awami Ministry, disregarding all the public demands, amended the electorate formula and imposed joint electorates over the entire country. All this was done to



appease the Hindu members and thereby keep themselves in power. This was the shameful way—out and out despotic—in which the system of joint electorate was thrust upon the country. Last of all, in October 1957 when after the fall of the Suhrawardy Ministry, the hope of the re-adoption of separate electorates dawned, all the vested interests again conspired to sabotage the move, and once again with the treachery of Republican Party, this constructive attempt was defeated, and the system of joint electorate remained tied to our necks.

5. People have condemned this tyrannical and Hindu-inspired move of the power-thirsty politicians. They have criticised it in unambiguous terms. They have agitated against it in all the accepted democratic ways. They have used all vehicles of democratic expression to voice their disapproval of it. Their opposition to it has been so thorough and so overwhelming that the so-called Fact Finding Committee of the Republican Party did not dare to publish its report. But, all this has not been able to move the unscrupulous politicians who rule the country through intrigues and alliance and pay not the least heed to the will of the people.

6. The imposition of the joint electorates is the most dangerous conspiracy that has been perpetrated upon the people of Pakistan. This is generating very grave consequences for Pakistan and is loaded with more explosive dangers for the future. The fact is that even a cursory appraisal of these dangers is sufficient to stagger a real patriot. The joint electorate is not only a negation of the two-nation theory—the very *raison d'être* of Pakistan—it is also a gross and flagrant violation of the principles of Islam, and is in clear conflict with the tenets and the basic scheme of the Constitution of the country. Nay, it is bound to endanger the very existence of Pakistan.

These are the consequences which must flow from it :

- (a) It will weaken the Islamic consciousness of the *Millat* and will inject alien ideas into the minds

of the coming generations. Weakening of the Islamic feelings will automatically result in weakening of the bonds of integration of Pakistan. Pakistan consists of so many otherwise heterogeneous elements—which have been united into a firm unit only by Islam. Anything that weakens this tie, is bound to act as a force of disintegration. This idea of joint electorates is based on the theory of territorial nationalism and not on Islam.

- (b) Joint electorate is, as a matter of fact, the first step in the scheme of its promoters. They are fanning the flames of Bengali nationalism. And they have given more than sufficient indications that their real aims are secularism and secession. The jubilation which was demonstrated by the Hindu leaders and the Hindu press of Bharat on the imposition of joint electorates and the felicitations which none other than the Bharti Prime Minister expressed on the formation of Noon Ministry are firm indicators of the future. The joint electorate is the door through which the demand for United Bengal wants to enter. They have erected the door and are now jealously guarding it. Money, influence, pressure, everything is being lavishly used in keeping the door intact. This is the greatest crack that has occurred in our defence wall—the next step will be the demolition of this wall.
- (c) The reason why Hindus, Communists and the vested interests are so eager to retain joint electorates becomes crystal-clear when one studies the influence they are going to command over the elections under this system. Statistics show that Hindus and the Muslim politicians of their choice will gain control over the political life of East Pakistan and, through it, will become a decisive factor in the

National Assembly. A careful study of the following data shows that Hindus are not demanding joint electorates out of any love for Pakistan, but in order to enable themselves to wield real authority in the political life of the country. Their new strategy is to prevail over Pakistan through this subterfuge. And the Communists are working hand in glove with them, for they also see into a sure chance for infiltrating into the political life of Pakistan.

The facts are as follows :

The East Pakistan Provincial Assembly will have 300 general and 10 women seats. An analysis of the position of Hindus in different Constituencies shows that :

In fourteen constituencies Hindu votes are in majority and here they are bound to get representatives of their own choice elected. These constituencies are :

1. Khulna Sadar South East.
2. Khulna Sadar South.
3. Satkhira East.
4. Bagerhat South.
5. Dinajpur Sadar North.
6. Gopalganj South West.
7. Gopalganj East.
8. Pirojpur North West.
9. Gopalganj West.
10. Thakurgaon Central.
11. Chittagong Hill Tracts North.
12. Chittagong Hill Tracts South.
13. Madaripur South West.
14. South Sylhet South West.

In thirty-five constituencies the non-Muslim population varies from 36% to 49.19%. As such, they, without the support of any Muslim votes, can get their candidates elected because

- (i) very few Muslim women vote while most of Hindu women cast their votes ;

- (ii) Hindu votes will be consolidated while Muslim votes will not be so ;
- (iii) all the Muslim voters do not use their votes while Hindus are politically much advanced, and
- (iv) the difficulties of communication and transport are also a disadvantage to the Muslim voters.

These constituencies are as follows :

<i>Name of the Constituencies</i>	<i>Percentage of non-Muslim Population</i>
1. Gopalganj North	... 49.19
2. Jessore Sadar South East	... 47.5
3. Bagerhat Central	... 49.0
4. Dinajpur Sadar West	... 49.0
5. Habibganj North West	... 38.0
6. Bagerhat North	... 45.0
7. Khulna Sadar South West	... 45.5
8. Satkhira West	... 44.5
9. Satkhira Sadar North	... 41.0
10. Khulna Sadar North	... 47.0
11. Thakurgaon South	... 42.3
12. Bagerhat East	... 41.0
13. Bakerganj Sadar North West	... 47.0
14. Piroojpur North East	... 40.0
15. Narail South East	... 40.3
16. Chittagong Sadar Central North East	... 42.0
17. Dacca Sadar Central South West	... 40.5
18. Satkhira North East	... 43.0
19. Sunamganj South West	... 48.0
20. Habibganj South	... 38.9
21. Habibganj South West	... 37.3
22. Munshiganj North West	... 39.0
23. Rangpur Sadar North	... 37.5
24. Goalondo South	... 37.06
25. Netrokona North	... 38.0
26. Sunamganj North West	... 36.6

<i>Name of the Constituencies</i>	<i>Percentage of non-Muslim Population</i>
27. Magurah North	... 40.0
28. Narail Central	... 49.0
29. South Sylhet East	... 48.0
30. South Sylhet South	... 47.0
31. South Sylhet North East	... 40.6
32. South Sylhet North West	... 40.0
33. Khulna Sadar North East	... 40.0
34. Bakerganj Sadar West	... 39.0
35. Brahmanbaria East	... 36.3

In eighty-nine constituencies Hindus have a consolidated vote of 20% to 35.45% and calculations show that they can win the elections with the support of very few Muslim votes. In the constituencies they are the deciding factor and need from .05 to 12.1% other votes to sweep the polls. These constituencies are as follows :

<i>Name of the Constituencies</i>	<i>Percentage of non-Muslim Population</i>
1. Netrokona South East	... 35.43
2. Nilphamari North	... 35.43
3. Rajshahi Sadar West	... 35.37
4. Feni North	... 35.37
5. Pirojpur West	... 35.0
6. Chittagong Sadar East	... 34.56
7. Chittagong Sadar Central South East	... 34.56
8. Bakerganj Sadar Central West	... 34.56
9. Faridpur Sadar West	... 34.56
10. Nilphamari West	... 34.0
11. Brahmanbaria North	... 34.0
12. Manikganj West	... 33.43
13. Thakurgaon West	... 33.33
14. Habibganj North	... 33.0
15. Magurah South	... 32.19

<i>Name of the Constituencies</i>	<i>Percentage of non-Muslim Population</i>
16. Brahmaubaria South East	... 32.11
17. Kishorganj North East	... 31.84
18. Mymensingh Sadar North	... 31.84
19. Satkhira North West	... 31.04
20. Chittagong Sadar Central	... 31.04
21. Dinajpur Sadar Central	... 30.06
22. Dinajpur Sadar South	... 30.06
23. Habibganj West	... 30.06
24. Suuamganj North	... 29.95
25. Dacca Sadar West	... 29.0
26. Dacca Sadar Central North	... 29.0
27. Narayanganj West	... 29.0
28. Nougau North	... 29.0
29. Nougau Central	... 29.0
30. Netrokona North East	... 29.0
31. Rangpur Sadar North East	... 28.93
32. Narail East	... 28.3
33. Jhinaidah North	... 27.76
34. Kurigram North West	... 27.54
35. Chittagong Sadar Central South	... 27.54
36. Tangail South East	... 27.54
37. Faridpur Sadar North	... 27.29
38. Manikganj East	... 27.29
39. Kishorganj South East	... 27.29
40. Bogra North West	... 27.17
41. Chittagong Sadar North West	... 27.15
42. Dacca Sadar North West	... 27.16
43. Nilphamari East	... 26.67
44. Madaripur South	... 26.0
45. Manikganj Central	... 26.0
46. Dacca Sadar South	... 26.0
47. Suuamganj South	... 26.0
48. Bagerhat South East	... 25.2

<i>Name of the Constituencies</i>	<i>Percentage of non-Muslim Population</i>
49. Jessore Sadar South	... 25.2
50. North Sylhet North West	... 25.2
51. Thakurgaon North	... 24.52
52. Jhinaidah Central	... 24.52
53. Natore North	... 24.52
54. Nongson North West	... 24.52
66. Brahmanbaria Central West	... 23.8
66. Goalondo North West	... 23.6
57. Tangail Central	... 23.5
58. Jessore Sadar Central	... 23.6
59. Brahmanbaria Central	... 23.16
60. North Sylhet North East	... 23.16
61. North Sylhet North	... 23.15
62. Brahmanbaria West	... 22.77
63. Faridpur Sadar North East	... 22.77
64. Tangail South	... 22.73
66. Netrokona East	... 22.59
66. Narayanganj South	... 22.59
67. Chittagong Sadar Central North West	... 22.55
68. Tippera Sadar North	... 22.55
69. Tangail Central East	... 22.23
70. Dacca Sadar South West	... 22.02
71. Manikganj North	... 21.92
72. Tippera Sadar East	... 21.9
73. Rangpur Sadar Central	... 21.86
74. Sirajganj North West	... 21.85
75. Jamalpur North East	... 21.85
78. Chittagong Sadar Central South West	... 21.66
77. Barkerganj Sadar Central	... 21.66
78. Faridpur Sadar South East	... 21.58
79. Nawahganj North	... 21.7
80. Rajshahi Sadar South	... 21.43
81. Kishorganj Central South	... 21.0

<i>Name of the Constituency</i>	<i>Percentage of non-muslim Population</i>
82. North Sylhet South	... 21.0
83. Chittagong Sadar North East	... 21.0
84. Pabna Sadar South East	... 20.88
85. Chittagong Sadar	... 20.5
86. Faridpur Sadar East	... 20.3
87. Faridpur Sadar South	... 20.0
88. Jhinaidah South	... 20.0
89. Dinajpur Sadar South East	... 20.0

In four women constituencies non-Muslim votes range from 34% to 39.7%. All these four seats are Hindu sureshots. Thus under the joint electorate system, Hindus are sure to get 142 seats either for themselves or for their nominees while under separate electorates they were having 70 seats only. In other constituencies also their consolidated votes may pay them handsome dividends.

*This conclusively shows that Hindus will wield decisive influence in East Pakistan politics and through it upon the Centre. What would be the consequences of it; is not difficult to imagine.*

*This further shows that even if one general election is held on the basis of joint electorates it would be sufficient to give the anti-Pakistan forces ample opportunities to administer, God forbid, a shattering blow to the integrity and survival of Pakistan.*

7. Now, what is the way out of this dangerous impasse? All facts—hard facts—drive us to the conclusion that the issue of electorates should be finally decided according to the will of the people before the first general elections are held. And this can be done if the issue is referred to the people for decision. Hence our demand is for a Referendum.

Referendum should be immediately held, because this is the only way to solve this issue peacefully and amicably and without delay—for delay will give upperhand to those elements whose continuance in power may endanger the very existence of



the country.

Referendum is the only way to decide the issue democratically. People have been very cunningly deprived of their basic political rights. Decisions are being continuously made by the ruling coterie in a dictatorial way and the voice of the people is not being given the least importance. Referendum means reference of an issue to the people, a Partial demonstration of their sovereign right. It will strengthen democracy in the country and will sound the death-knell of the anti-democratic forces who are bragging about revolutionary councils and the like.

As a matter of fact, referendum is the only way out.

It will not delay the general elections, rather it will ensure their early occurrence. If the public pressure and public censure exert themselves fully, no power on earth can delay the elections. The referendum will establish the supremacy of the people and strengthen their force, power and pressure. In the face of their aroused interest and united force, there is no question of delay in elections.

Lists should be prepared community-wise so that they can equally serve under both systems. Delimitation will have to be done simultaneously on joint and separate basis. This may entail a little more expenditure but it is of no significance in the face of the importance of the problem. With the help of more staff all arrangements can be made without causing any delay.

According to the schedule of the Elections Commission all this work would be finished by June 1958. On the new arrangement the same schedule can be strictly maintained. Referendum should be held in October 1958. Its result can be compiled within a fortnight. Preparations for general elections should continue unabated. And the general elections can be held within two or at the most three months of the referendum date. This is how we can come out of this dangerous situation without delaying the general elections.

# Appendix VI

## ABUL A'LA MAUDUDI A BIOGRAPHICAL SKETCH

SAYYID ABUL A'LA MAUDUDI is one of the greatest thinkers and social reformers of the world of Islam. He was born in Anrangabad (Hyderabad, Deccan, India) on 25th September, 1903 and started his public life as a journalist in 1920. At the age of seventeen, he became the editor of daily *Taj*, Jahalpur and later on edited the *Al-Jamiat*, Delhi—one of the most influential and popular Muslim newspapers of India of the nineteen-twenties. In 1929, when he was 26 years old, he published his scholarly and monumental work *Al-Jihad Fi-al-Islam* (Holy War in Islam). This book is unprecedented in the Islamic literature and the equal of it cannot be found even in Arabic.

Maududi, later on, shifted from Delhi to Hyderabad (Deccan) and in 1932 started *Tarjuman al-Qur'an*, a monthly journal dedicated to the cause of Islamic Renaissance. This journal has played the pioneer's role in stirring the new awakening among the educated elite of Muslim India and an Indian historian rightly declares that no future historian of the Muslim India can ignore the part played by this journal.

It was in 1937 that Dr. Muhammad Iqbal wrote to Maulana Maududi to shift to Punjab and co-operate with him in the gigantic research work of the reconstruction and the codification of Islamic Jurisprudence. This correspondence was followed by two meetings between these luminaries of Islam. Finally it was decided that Maulana Maududi should shift to Punjab and direct an institution of Islamic research—*Dar al-Islam*. Maulana Maududi left Hyderabad and settled in Punjab in March 1938. "But alas!", in the words of Maududi himself, "he (Iqbal) was in the last days of his life. The very next month he breathed

his last and I was left alone for the uphill task we had decided to undertake jointly".

At Lahore Maulana Mandudi also worked for nearly two years as the Dean of the Faculty of Theology, Islamia College, Lahore. In 1941 he organised the Renaissance Movement—Jamaat-e-Islami—and was elected its chief. After Partition he launched the movement of Islamic Constitution and the Islamic way of life and was arrested on 4th October, 1948. After 20 months of imprisonment he was released in May, 1950. Again in 1953 he was sentenced to death for writing a pamphlet which itself was never proscribed. This sentence was commuted to life imprisonment, which meant rigorous imprisonment for fourteen years and was released on 28th April 1955 under a decision of Supreme Court. Again on 6th January 1964, he was arrested for the third time, when Jamaat-e-Islami, Pakistan was banned under Ayub Regime. He was released by Punjab High Court on 9th October 1964.

Fourth time, he was arrested on 29th January 1967 for opposing Ayub Khan's regime for celebrating Eid-ul-Fitr one day before the moon sighting. In consequence of a writ petition the Government released Maulana Mandudi after 2½ months detention on 15th March 1967.

Maulana Mandudi started writing his *Tafhim al-Qur'an* (Towards Understanding the Qur'an—Translation and Commentary on the Qur'an) in February 1942. This is the most revolutionary and epoch-making book of our age. It has been completed in six volumes after 30 years 4 months on 7th June 1972.

Mandudi is a prolific writer and is the author of nearly sixty works on Islam. His approach is scientific and logical. His vast knowledge of Islam and of modern thought has given him the unique quality of presenting Islam in the most systematic way having a special appeal for the educated people. He has given a very realistic interpretation of Islam and inspired the Muslim youth to translate the Islamic way of life into practice. He is a great thinker and man of action. In short, he is a 'practical idealist'.—EDITOR.